



CIGARETTE AND TOBACCO PRODUCTS TAX LAW

CONTENTS

	<i>Page</i>
FEDERAL LAWS RELATING TO STATE TAXATION.....	7213
ANALYSIS OF CALIFORNIA CIGARETTE AND TOBACCO PRODUCTS TAX LAW ...	7217
CHAPTER 1 GENERAL PROVISIONS AND DEFINITIONS	7221
Section 30001 Title.....	7221
30002 Construction	7221
30003 Cigarette	7221
30005 Untaxed cigarette	7222
30005.5 Untaxed tobacco product	7222
30006 Sale	7222
30008 Distribution.....	7222
30009 Use or consumption.....	7222
30010 Person	7222
30011 Distributor	7223
30012 Dealer.....	7223
30013 In this State.....	7223
30014 Transporter	7223
30015 Package	7223
30016 Wholesaler.....	7224
30017 Wholesale cost.....	7224
30018 Stamps and meter impressions	7224
30019 Importer.....	7224
CHAPTER 2 IMPOSITION OF TAX	7224
Article 1 Tax on Distributors.....	7224
Section 30101 Rate of tax	7224
30101.7 Face-to-face sale	7225
30102 Sale to certain federal instrumentalities ...	7226
30102.5 Distribution under internal revenue bond	
or customs control	7227
30103 Sale by manufacturer.....	7227
30103.5 Sale or transfer to law enforcement.....	7227
30104 Common carrier of passengers	7227
30105 Sale by original importer	7228
30105.5 Sale or gift to veterans' institutions	7228
30106 Consumer exemption.....	7228
30107 Payment by consumer	7228
30108 Collection by distributor	7228
30109 Presumption of distribution.....	7229
30110 Claim for exemption.....	7230
30111 In lieu tax. Subject to sales and use	
taxes	7230

CONTENTS (Contd.)

			<i>Page</i>
Article	2	Cigarette and Tobacco Products Surtax....	7230
Section	30121	Definitions	7230
	30122	Cigarette and tobacco products surtax fund	7231
	30123	Rate of tax; cigarettes; tobacco products..	7231
	30124	Disposition of fund.....	7232
	30125	Use of funds	7233
	30126	Determination of tobacco products tax rate	7233
	30128	Effective date; article.....	7234
	30129	Imposition of tax; effective date.....	7234
	30130	Amendments to article.....	7234
Article	3	California Children and Families First Trust Fund Account	7234
Section	30131	Purpose.....	7234
	30131.1	Definitions	7234
	30131.2	Rate of tax; cigarettes; tobacco products..	7234
	30131.3	Disposition of funds	7235
	30131.4	Use of funds	7235
	30131.5	Determination of tobacco products tax rate	7235
	30131.6	Imposition of tax; effective date.....	7235
CHAPTER	3	LICENSES, BONDS AND REGISTRATION.....	7236
Article	1	Licenses and Bonds.....	7236
Section	30140	Distributor's license	7236
	30140.1	Licenses; persons not engaged in business in this State.....	7236
	30141	Bond requirements	7236
	30142	Amount of bond	7237
	30143	Withdrawal of surety	7238
	30144	Suspension of license	7238
	30146	Liquidation of security	7238
	30147	Issuance and display of license	7238
	30148	Revocation of license	7239
	30149	Misdemeanor	7239
Article	2	Registration	7239
Section	30151	Registration of unlicensed distributors....	7239
Article	3	Wholesalers	7239
Section	30155	Wholesaler's license.....	7239
	30156	Fee or bond prohibited	7240
	30157	Issuance and display of license	7240

CONTENTS (Contd.)

		<i>Page</i>
	30158	Revocation of license 7240
	30159	Misdemeanor 7240
CHAPTER	3.5	STAMPS AND METER MACHINES..... 7240
Article	1	Use of Stamps and Impressions 7240
Section	30161	Tax payment by use of stamps and impressions 7241
	30162	Design; manner of affixing 7241
	30163	Affixed to packages..... 7242
	30164	Use of machines; transfer of stamps or meters 7242
	30165	Tax payment without stamps or impressions 7242.1
	30165.1	Master Settlement Agreement compliance 7243
Article	2	Sale to Distributors..... 7252
Section	30166	Payment for stamps and settings; discount 7252
	30166.1	Legislative report; evaluation of cost to apply stamps and settings..... 7252
	30167	Application for credit purchases..... 7252
	30168	Due date for credit purchases..... 7252
	30169	Authorization of agent..... 7254
	30170	Suspension of credit 7254
	30171	Penalty and interest 7254
	30172	Extension of time 7254
Article	3	Determinations 7254
Section	30173	Basis for determination; notice..... 7254
	30174	Determination final 7255
	30175	Petition for redetermination 7255
Article	4	Refunds 7255
Section	30176	Unused stamps and meter settings..... 7255
	30176.1	Refunds; exported tax-paid tobacco products 7256
	30176.2	Refunds and credits; returned tobacco products 7256
	30177	Unusable or destroyed cigarettes..... 7256
	30177.5	Credit; stamps affixed or tax paid in violation of Attorney General certification 7257
	30178	Claim; limitation period..... 7257

CONTENTS (Contd.)

		<i>Page</i>
	30178.1 Application for refund; limitation period .	7257
	30178.2 Credit in lieu of refund	7257
	30179 Interest	7258
	30179.1 Interest; limitations.....	7258
Article	5 Other Provisions Applicable.....	7258
Section	30180 Other provisions applicable.....	7258
CHAPTER	4 DETERMINATIONS	7259
Article	1 Reports and Payments	7259
Section	30181 Due date	7259
	30182 Report by licensed distributor	7261
	30183 Report by registered distributor.....	7262
	30184 Remittance of tax	7263
	30185 Extension of time	7263
	30186 Report of sales on common carrier.....	7263
	30187 Report of consumer.....	7263
	30188 Report by wholesaler.....	7264
Article	1.1 Payment by Electronic Funds Transfer	7264
Section	30190 Electronic funds transfer payments.....	7264
	30191 Relief of penalty	7265
	30192 Definitions	7265
	30193 Electronic filing	7266
Article	2 Deficiency Determinations.....	7267
Section	30201 Basis of deficiency determination	7267
	30202 Interest	7267
	30203 Offset	7267
	30204 Penalty	7267
	30205 Fraud penalty	7267
	30206 Notice of determination	7267
	30207 Statute of limitation.....	7268
	30207.1 Limitations; deficiency determination; decident.....	7268
	30208 Waiver	7268
Article	2.5 Payment by Unlicensed Persons.....	7268
Section	30210 Immediate liability for tax	7268
	30211 Penalty	7269
	30212 Seizure and sale of property.....	7269
	30213 Copy of determination.....	7269
	30214 Cumulative remedies	7269
	30215 Applicable penal provisions.....	7269
	30216 Repeal date	7269

CONTENTS (Contd.)

		<i>Page</i>
Article	3	Determinations If No Report or Return Made.....
		7269
Section	30221	Basis of determination; penalty
		7269
	30222	Offset
		7270
	30223	Interest
		7270
	30224	Fraud penalty
		7270
	30225	Notice of determination
		7270
Article	4	Jeopardy Determinations
		7270
Section	30241	Basis of determination.....
		7270
	30242	Finality date.....
		7270
	30243	Petition for redetermination; security.....
		7271
	30243.5	Administrative hearing
		7271
	30244	Service of notice
		7271
Article	5	Redeterminations.....
		7272
Section	30261	Petition for redetermination
		7272
	30261.5	Form and content
		7272
	30262	Oral hearing.....
		7272
	30263	Finality date.....
		7272
	30264	Due date; penalty
		7272
	30265	Service of notice
		7272
	30266	Decrease or increase of determination
		7272
Article	6	Interest and Penalties.....
		7273
Section	30281	Interest and penalties
		7273
	30282	Excusable delay
		7273
	30283	Relief from interest; disaster
		7273
	30283.5	Relief of interest
		7274
	30284	Reasonable reliance on written advice; relief of tax, penalty, and interest.....
		7274
CHAPTER	5	COLLECTION OF TAX.....
		7275
Article	1	Suit for Tax.....
		7275
Section	30301	Court action
		7275
	30302	Attachment
		7275
	30303	Certificate of delinquency
		7275
Article	1.5	Notice to Withhold
		7276
Section	30311	Notice to creditors.....
		7276
	30312	Transferability of credits.....
		7276
	30313	Notice to board
		7276
	30314	Liability of creditor
		7277
	30315	Notice of levy
		7278
	30316	Employer withheld earnings.....
		7279

CONTENTS (Contd.)

			<i>Page</i>
Article	2	Priority and Lien of Tax	7280
Section	30321	Priority of lien	7280
	30322	Liens; perfection and enforceability of	7281
Article	3	Warrant for Collection of Tax	7281
Section	30341	Warrant; limitation period	7281
	30342	Fees and expenses	7282
	30343	Collection of fees	7282
Article	4	Miscellaneous Provisions.....	7282
Section	30351	Remedies; cumulative.....	7282
	30352	Board; authority of	7282
	30353	Furnishing of partnership agreement	7282
	30354	Installment payment agreement.....	7282
	30354.5	Installment payment annual statement	7283
Article	5	Seizure and Sale.....	7283
Section	30355	Seizure and sale	7283
	30356	Notice of sale.....	7283
	30357	Conduct of sale	7284
	30358	Disposition of proceeds	7284
	30359	Repeal date	7284
CHAPTER	6	OVERPAYMENTS AND REFUNDS.....	7284
Article	1	Claim for Refund	7284
Section	30361	Credits and refunds	7284
	30362	Claim; limitations period	7285
	30362.1	Claim limitation; financially disabled.....	7285
	30363	Form and content of claim.....	7286
	30364	Failure to file claim.....	7286
	30365	Notice of action	7286
	30366	Interest	7286
	30367	Disallowance of interest	7287
Article	2	Recovery of Erroneous Refunds.....	7287
Section	30381	Erroneous refund. Actions.....	7287
	30382	Place of trial	7287
	30383	Rules of procedure, etc	7287
	30384	Interest on erroneous refunds	7288
Article	3	Suit for Refund	7288
Section	30401	Enjoining collection forbidden	7288
	30402	Necessity of refund claim	7288
	30403	Action for refund; limitation	7288
	30404	When refund claim not acted upon.....	7288
	30405	Failure to bring suit within time.....	7288

CONTENTS (Contd.)

		<i>Page</i>
	30406	Disposition of amount of judgment; interest 7289
	30407	Judgment for assignee forbidden 7289
Article	4	Cancellations 7289
Section	30421	Cancellation of determination 7289
CHAPTER	7	REQUIREMENTS FOR TRANSPORTERS 7289
Section	30431	Transporter's permit 7289
	30432	Invoices covering shipment..... 7290
CHAPTER	7.5	SEIZURE AND FORFEITURE 7290
Section	30435	Inspections by board..... 7290
	30436	Property forfeited 7291
	30437	Notice of seizure and forfeiture..... 7292
	30438	Petition for release or recovery; limitation period 7292
	30439	Determination of petition..... 7292
	30440	Court action by petitioner; limitation period..... 7293
	30441	Deposit in lieu of property 7293
	30442	Court action by the board; limitation period..... 7293
	30443	Service of petition on interested persons.. 7293
	30444	Answer to petition..... 7293
	30445	Court procedure 7294
	30446	Court hearing; notice..... 7294
	30447	Court hearing; evidence..... 7294
	30448	Court order 7294
	30449	Sale and destruction of forfeited property 7294
CHAPTER	8	ADMINISTRATION..... 7295
Article	1	Administration 7295
Section	30451	Enforcement by board; rules and regulations..... 7295
	30452	Employees and representatives of board .. 7295
	30453	Records 7295
	30454	Examination of records; supplemental reports..... 7295
	30455	Divulging of information forbidden..... 7296
	30455.5	Information confidential; tax preparer 7296
	30456	Certificate of notice..... 7296

CONTENTS (Contd.)

			<i>Page</i>
Article	2	The California Taxpayers' Bill of Rights ..	7297
Section	30458	Administration	7297
	30458.1	Taxpayers' Rights Advocate.....	7297
	30458.2	Education and information program	7297
	30458.3	Annual hearing with taxpayers.....	7298
	30458.4	Preparation of statements by board.....	7298
	30458.5	Limit on revenue collected or assessed....	7298
	30458.6	Evaluation of employee's contact with taxpayers	7299
	30458.7	Plan to timely resolve claims and petitions	7299
	30458.8	Procedures relating to protest hearings	7299
	30458.9	Reimbursement of taxpayer	7299
	30459	Investigation for nontax administration purposes	7300
	30459.1	Settlement authority	7300
	30459.2	Release of levy	7302
	30459.2A	Return of property	7302
	30459.3	Exemptions from levy	7303
	30459.4	Reimbursement of bank charges.....	7303
	30459.5	Mailing of preliminary notice of lien.....	7303
	30459.6	Revocation or suspension of license	7304
	30459.7	Disregard by board employee or officer ..	7304
	30459.8	Revenues and disbursements; Web site posting	7305
Uncodified Sections			
	1	Multiagency task force	7305
CHAPTER	9	DISPOSITION OF PROCEEDS	7307
Section	30461	Cigarette tax fund.....	7307
	30461.6	Disposition of fund.....	7307
	30462	Disposition of fund.....	7310
	30462.1	City population estimates.....	7311
CHAPTER	10	VIOLATIONS	7312
Section	30471	Criminal penalties	7312
	30472	Criminal penalties	7312
	30473	Penalty for counterfeiting	7313
	30473.5	Penalty for fraudulent stamps.....	7313
	30474	Penalty for selling unstamped cigarettes ..	7313
	30474.1	Penalty for selling or possessing counterfeit cigarettes or tobacco products	7314

CONTENTS (Contd.)

	<i>Page</i>
30474.5 Competitive grant program	7314
30475 Penalty for violation of transporter provisions.....	7316
30476 Penalty for placing cigarettes without tax indicia in vending machine.....	7316
30477 Violation of law	7316
30478 Penalty; retailer purchasing from unauthorized persons	7316
30479 Penalty; retailer convicted twice.....	7317
30480 Felony offense	7317
30481 Prosecution for violation.....	7317
30482 Reimbursement of investigation and prosecution costs	7317
HEALTH AND SAFETY CODE	7319
INDEX.....	7325
TABLE OF CASES.....	7331

7212
2005-1

CIGARETTE AND TOBACCO PRODUCTS TAX LAW

FEDERAL LAWS RELATING TO STATE TAXATION

PROVISIONS RELATING TO COLLECTION OF
STATE CIGARETTE AND TOBACCO PRODUCT TAXES

(15 U.S.C.A., Sections 375-378; 63 Stat. 884, as amended by 67 Stat. 617, and 69 Stat. 627.)

§ 375. **Definitions.** For the purposes of this chapter—

(1) The term “person” includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

(2) The term “cigarette” means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not such tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of paper or any other substance or material except tobacco.

(3) The term “distributor licensed by or located in such State” means—

(A) in the case of any State which by State statute or regulation authorizes the distribution of cigarettes at wholesale or retail, any person so authorized, or

(B) in the case of any other State, any person located in such State who distributes cigarettes at wholesale or retail; but such term in no case includes a person who acquires cigarettes for purposes other than resale.

(4) The term “use”, in addition to its ordinary meaning, means the consumption, storage, handling, or disposal of cigarettes.

(5) The term “tobacco tax administrator” means the State official duly authorized to administer the cigarette tax law of a State.

(6) The term “State” includes the District of Columbia, Alaska, Hawaii, and the Commonwealth of Puerto Rico.

(7) The term “transfers for profit” means any transfer for profit or other disposition for profit, including any transfer or disposition by an agent to his principal in connection with which the agent receives anything of value.

§ 376. **Reports to State tobacco tax administrators; contents; presumptive evidence.** (a) Any person who sells or transfers for profit cigarettes in interstate commerce, whereby such cigarettes are shipped into a State taxing the sale or use of cigarettes, to other than a distributor licensed by or located in such State, or who advertises or offers cigarettes for such a sale or transfer and shipment, shall—

(1) first file with the tobacco tax administrator of the State into which such shipment is made or in which such advertisement or offer is disseminated a statement setting forth his name and trade name (if any), and the address of his principal place of business and of any other place of business; and

(2) not later than the 10th day of each calendar month, file with the tobacco tax administrator of the State into which such shipment is made, a memorandum or a copy of the invoice covering each and every shipment of

cigarettes made during the previous calendar month into such State; the memorandum or invoice in each case to include the name and address of the person to whom the shipment was made, the brand, and the quantity thereof.

(b) The fact that any person ships or delivers for shipment any cigarettes shall, if such shipment is into a State in which such person has filed a statement with the tobacco tax administrator under subsection (a)(1) of this section, be presumptive evidence (1) that such cigarettes were sold, or transferred for profit, by such person, and (2) that such sale or transfer was to other than a distributor licensed by or located in such State.

§ 377. **Penalties.** Whoever violates any provisions of this chapter shall be guilty of a misdemeanor and shall be fined not more than \$1,000, or imprisoned not more than six months, or both.

§ 378. **Jurisdiction to prevent and restrain violations.** The United States district courts shall have jurisdiction to prevent and restrain violations of this chapter.

(18 U.S.C.A., Sections 2341-2346; 92 Stat. 2463.)

§ 2341. **Definitions.**

As used in this chapter—

(1) the term “cigarette” means—

(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco; and

(B) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in subparagraph (A);

(2) the term “contraband cigarettes” means a quantity in excess of 60,000 cigarettes, which bear no evidence of the payment of applicable State cigarette taxes in the State where such cigarettes are found, if such State requires a stamp, impression, or other indication to be placed on packages or other containers of cigarettes to evidence payment of cigarette taxes, and which are in the possession of any person other than—

(A) a person holding a permit issued pursuant to chapter 52 of the Internal Revenue Code of 1954 as a manufacturer of tobacco products or as an export warehouse proprietor, or a person operating a customs bonded warehouse pursuant to section 311 or 555 of the Tariff Act of 1930 (19 U.S.C. 1311 or 1555) or an agent of such person;

(B) a common or contract carrier transporting the cigarettes involved under a proper bill of lading or freight bill which states the quantity, source, and destination of such cigarettes;

(C) a person—

(i) who is licensed or otherwise authorized by the State where the cigarettes are found to account for and pay cigarette taxes imposed by such State; and

(ii) who has complied with the accounting and payment requirements relating to such license or authorization with respect to the cigarettes involved; or

(D) an officer, employee, or other agent of the United States or a State, or any department, agency, or instrumentality of the United States or a State (including any political subdivision of a State) having possession of such cigarettes in connection with the performance of official duties;

(3) the term “common or contract carrier” means a carrier holding a certificate of convenience and necessity, a permit for contract carrier by motor vehicle, or other valid operating authority under the Interstate Commerce Act, or under equivalent operating authority from a regulatory agency of the United States or of any State;

(4) the term “State” means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands; and

(5) the term “Secretary” means the Secretary of the Treasury.

§ 2342. **Unlawful acts.**

(a) It shall be unlawful for any person knowingly to ship, transport, receive, possess, sell, distribute, or purchase contraband cigarettes.

(b) It shall be unlawful for any person knowingly to make any false statement or representation with respect to the information required by this chapter to be kept in the records of any person who ships, sells, or distributes any quantity of cigarettes in excess of 60,000 in a single transaction.

§ 2343. **Recordkeeping and inspection.**

(a) Any person who ships, sells, or distributes any quantity of cigarettes in excess of 60,000 in a single transaction shall maintain such information about the shipment, receipt, sale, and distribution of cigarettes as the Secretary may prescribe by rule or regulation. The Secretary may require such person to keep only—

(1) the name, address, destination (including street address), vehicle license number, driver’s license number, signature of the person receiving such cigarettes, and the name of the purchaser;

(2) a declaration of the specific purpose of the receipt (personal use, resale, or delivery to another); and

(3) a declaration of the name and address of the recipient’s principal in all cases when the recipient is acting as an agent.

Such information shall be contained on business records kept in the normal course of business. Nothing contained herein shall authorize the Secretary to require reporting under this section.

(b) Upon the consent of any person who ships, sells, or distributes any quantity of cigarettes in excess of 60,000 in a single transaction, or pursuant to a duly issued search warrant, the Secretary may enter the premises (including places of storage) of such person for the purpose of inspecting any

records or information required to be maintained by such person under this chapter, and any cigarettes kept or stored by such person at such premises.

§ 2344. **Penalties.**

(a) Whoever knowingly violates section 2342(a) of this title shall be fined under this title or imprisoned not more than five years, or both.

(b) Whoever knowingly violates any rule or regulation promulgated under section 2343(a) or 2346 of this title or violates section 2342(b) of this title shall be fined under this title or imprisoned not more than three years, or both.

(c) Any contraband cigarettes involved in any violation of the provisions of this chapter shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1986 relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of such Code, shall, so far as applicable, extend to seizures and forfeitures under the provisions of this chapter.

§ 2345. **Effect on State law.**

(a) Nothing in this chapter shall be construed to affect the concurrent jurisdiction of a State to enact and enforce cigarette tax laws, to provide for the confiscation of cigarettes and other property seized for violation of such laws, and to provide for penalties for the violation of such laws.

(b) Nothing in this chapter shall be construed to inhibit or otherwise affect any coordinated law enforcement effort by a number of States, through interstate compact or otherwise, to provide for the administration of State cigarette tax laws, to provide for the confiscation of cigarettes and other property seized in violation of such laws, and to establish cooperative programs for the administration of such laws.

§ 2346. **Enforcement and regulations.**

The Secretary, subject to the provisions of section 2343(a) of this title, shall enforce the provisions of this chapter and may prescribe such rules and regulations as he deems reasonably necessary to carry out the provisions of this chapter.

ANALYSIS OF CALIFORNIA CIGARETTE AND TOBACCO PRODUCTS TAX LAW

Nature and Rate of Tax. A cigarette tax is imposed upon distributors of cigarettes at the rate of six mills (\$0.006) for the distribution of each cigarette, including, effective January 1, 1994, one mill to fund a breast cancer awareness campaign. Effective January 1, 1989, (Proposition 99) a Cigarette and Tobacco Products Surtax is imposed upon distributors of cigarettes at the rate of twelve and one-half mills (\$0.0125) for each cigarette distributed and a tax is imposed upon distributors of tobacco products, based on the wholesale cost of the products, at a rate determined annually. Effective January 1, 1999 (Proposition 10), another surtax is imposed upon distributors of cigarettes at the rate of twenty-five mills (\$0.025) for each cigarette distributed, and an additional surtax is imposed upon distributors of tobacco products, based on the wholesale cost of the products, at a rate determined annually.

“Dealer.” A “dealer” is a person, other than a licensed distributor or wholesaler, who engages in the sale of cigarettes or tobacco products. Dealers are required to purchase cigarettes only from licensed distributors or licensed wholesalers.

“Distributor.” A “distributor” is, primarily, a person who sells cigarettes with respect to which liability for the tax has not accrued prior to his or her sale thereof. The term also includes certain persons who accept orders for cigarettes or tobacco products, persons who use or consume untaxed cigarettes or tobacco products, and persons who place untaxed cigarettes in a vending machine or retail stock for sale to consumers.

“Wholesaler.” A “wholesaler” is a person, other than a licensed distributor, who engages in making sales for resale of cigarettes which are contained in packages to which are affixed stamps or meter impressions.

“Cigarette.” “Cigarette,” as defined in the law, means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with any other ingredient, where such roll has a wrapping or cover made of paper or any other material, except where such wrapper is wholly or in the greater part made of tobacco and such roll weighs over three pounds per thousand.

“Tobacco Products.” “Tobacco products” include all forms of cigars, smoking tobacco, chewing tobacco, snuff, and other products containing at least 50 percent tobacco, except cigarettes.

Licenses and Bonds. Any person engaging in the sale of cigarettes or tobacco products as a distributor must obtain a license for each place of business at which he or she distributes cigarettes or tobacco products and must file with the State Board of Equalization a surety bond or other security as provided by the law. Unlicensed distributors are required to register with the board.

Any person engaging in the sale of cigarettes as a wholesaler must obtain a license for each place of business at which he or she engages in the business of selling cigarettes as a wholesaler. No fee or bond is required for the issuance of a wholesaler's license.

Sales to Governmental Agencies. The tax applies to distributions of cigarettes or tobacco products to the United States, its agencies and instrumentalities, with the exception of sales to exchanges, commissaries and ships' stores of the armed forces, and sales to the Veterans Administration. The tax generally applies to distributions to the State of California, a subdivision, or city, county, or city and county thereof, or any agency or instrumentality thereof.

Certain Exempt Transactions. 1. Sales by manufacturers to licensed distributors are exempt.

2. Sales by distributors to common carriers engaged in interstate or foreign passenger service, or to a person authorized to sell cigarettes or tobacco products on the facilities of such carrier are exempt. Such carrier or person must pay an equivalent tax when selling the cigarettes or tobacco products.

3. A sale or gift of federally tax-free cigarettes or tobacco products to a veterans' institution is exempt.

4. Distributions of federally tax-free cigarettes or tobacco products which are under internal revenue bond or customs control are exempt.

5. The sale of cigarettes or tobacco products by the original importer to a licensed distributor if the cigarettes or tobacco products are manufactured outside the United States is exempt.

6. Distributions which this state is prohibited from taxing under the Constitution or laws of the United States or under the Constitution of this state are exempt. These include, for example, shipments by distributors to purchasers in other states, territories or foreign countries of cigarettes or tobacco products which are not to be returned to this state before use.

Tax on Use or Consumption of Cigarettes or Tobacco Products. Any person who receives cigarettes or tobacco products shipped to him from without the state for his own use or consumption is required to pay a tax upon their use or consumption in this state at the rate applicable to distributions regardless that tax may have been paid to another state. Further, any person who obtains cigarettes in quantities of more than 400 at one time or any tobacco products from an exempt instrumentality of the U.S. Government is required to pay a tax on the use or consumption in this state of all of the cigarettes or tobacco products so obtained. Any person who brings or transports into this state cigarettes in quantities of more than 400 at any one time or any tobacco products is required to pay a tax on the use or consumption in this state of all of the cigarettes or tobacco products so obtained, regardless that tax may have been paid to another state. The tax is payable directly to the Board unless the cigarettes or tobacco products are

purchased from a person engaged in business in this state who has collected the tax and given the purchaser a receipt therefor. For the requirement to collect the tax, see Section 30108.

Any consumer or user who is required to pay the tax directly to the Board, must make a report and pay the tax to the Board on or before the 25th day of the month following the receipt of the cigarettes or tobacco products.

Payment of Tax. The tax on the distribution of cigarettes is, for the most part, paid by distributors through the use of stamps or meter impressions. Stamps and meter register settings are sold through convenient outlets throughout the state by the State Board of Equalization. Licensed cigarette distributors are allowed a discount of 0.85 percent of the value of stamps or meter impressions at the time of purchase of the tax indicia. A tax stamp or meter impression of the proper denomination must be affixed to each package of cigarettes before it is distributed. Provision is made for refund or credit for unused stamps or meter register settings as well as for stamps and meter impressions which have been affixed to packages of cigarettes which become unfit for use or unsalable or which are destroyed prior to distribution.

The tax on the distribution of tobacco products is paid by distributors by their filing monthly returns with the Board.

Reports. Every distributor is required to file a monthly report with the board on forms prescribed by the board respecting his distribution of cigarettes or tobacco products and such other information as the board may require. Failure to file such reports, returns and other data as may be required will result in the imposition of appropriate penalties. Every wholesaler is required to file a monthly report with the board respecting his inventory, purchases, and sales of cigarettes.

Administration. Every distributor and every person dealing in, transporting or storing cigarettes or tobacco products in this state shall keep such records, reports, invoices and other pertinent documents in such form as the board may require. The board is authorized to make prescribed rules and regulations relating to the administration and enforcement of the law and is also authorized to make an examination of books, papers, records and equipment of persons dealing in, transporting or storing cigarettes or tobacco products.

Disposition of Proceeds. All payments made to the state for the 5 mill tax on the distribution of cigarettes are deposited in the State Treasury to the credit of the Cigarette Tax Fund. Money deposited in this fund is used to pay any refunds of the tax authorized by the Cigarette Tax Law and support state government. Payments made to the state for the Proposition 99 surtax on cigarettes and tobacco products are deposited into the Cigarette and Tobacco Products Surtax Fund which consists of six separate accounts and may only be appropriated for purposes specified in Section 30122. Funds from the one mill tax on cigarettes are deposited in the Breast Cancer Fund for the purpose of funding research and awareness campaigns. Payments to the state for the

Proposition 10 surtax on cigarettes and tobacco products are deposited into the California Children and Families First Trust Fund.

Violations. Severe criminal penalties are provided for forging of tax stamps or meter impressions and for possessing, selling, or transporting packages of cigarettes to which there are not affixed stamps or meter impressions required to be affixed thereto. Provision is also made for seizure of cigarettes with respect to which the tax has not been paid or stamps or meter impressions affixed as required by the law. Vending machines in which such cigarettes or tobacco products are held for sale may also be seized and forfeited to the state. Other criminal penalties apply for failure to file reports, for making false reports, for improperly transporting on the highways unstamped cigarettes or tobacco products upon which the tobacco products surtax has not been paid, and for loading a vending machine with such cigarettes or tobacco products.

CIGARETTE AND TOBACCO PRODUCTS TAX LAW

(Part 13, Division 2, Revenue and Taxation Code *)

Enacted Statutes 1959, Chapter 1040; amended Statutes 1960, Chapters 12, 13; Statutes 1961, Chapters 178, 416, 486, 884, 893, 2193; Statutes 1963, Chapters 558, 1527; Statutes 1965, Chapters 332, 671, 679, 690, 1920; Statutes 1967, Chapters 881, 963, 1472; Statutes 1968, Chapters 469, 539, 543, 627, 711, 940, 1108, 1187, 1299; Statutes 1969, Chapters 24, 128, 933; Statutes 1970, Chapter 547; Statutes 1971, Chapters 261, 1400, 1634; Statutes 1972, Chapter 103; Statutes 1973, Chapter 806. Statutes 1974, Chapters 610, 1516; Statutes 1975, Chapters 661, 1235; Statutes 1976, Chapter 206; Statutes 1977, Chapters 329, 481, 921; Statutes 1978, Ch. 827; Statutes 1979, Chapters 322, 373, 712; Statutes 1980, Chapter 600. Statutes 1981, Chapter 947. Statutes 1982, Chapters 5 (First Extra Session), 454, 517, and 1589. Statutes 1983, Chapter 1092.

- | | | |
|---------|------|---|
| Chapter | 1. | General Provisions and Definitions. §§ 30001–30019. |
| | 2. | Imposition of Tax. §§ 30101–30131.6. |
| | 3. | Licenses, Bonds and Registration. §§ 30140–30159. |
| | 3.5. | Stamps and Meter Machines. §§ 30161–30180. |
| | 4. | Determinations. §§ 30181–30284. |
| | 5. | Collection of Tax. §§ 30301–30359. |
| | 6. | Overpayments and Refunds. §§ 30361–30421. |
| | 7. | Requirements for Transporters. §§ 30431–30432. |
| | 7.5. | Seizure and Forfeiture. §§ 30435–30449. |
| | 8. | Administration. §§ 30451–30459.8. |
| | 9. | Disposition of Proceeds. §§ 30461–30462.1. |
| | 10. | Violations. §§ 30471–30482. |

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

- | | |
|-----------|-------------------------------|
| § 30001. | Title. |
| § 30002. | Construction. |
| § 30003. | Cigarette. |
| § 30005. | Untaxed cigarette. |
| § 30005.5 | Untaxed tobacco product. |
| § 30006. | Sale. |
| § 30008. | Distribution. |
| § 30009. | Use or consumption. |
| § 30010. | Person. |
| § 30011. | Distributor. |
| § 30012. | Dealer. |
| § 30013. | In this State. |
| § 30014. | Transporter. |
| § 30015. | Package. |
| § 30016. | Wholesaler. |
| § 30017. | Wholesale cost. |
| § 30018. | Stamps and meter impressions. |
| § 30019. | Importer. |

30001. Title. This part is known and may be cited as the “Cigarette and Tobacco Products Tax Law.”

History.—Stats. 1989, Ch. 634, in effect September 21, 1989 added “and Tobacco Products” after “Cigarette”.

30002. Construction. Except where the context otherwise requires, the definitions given in this chapter govern the construction of this part.

Note.—Sec. 2, Statutes 1959, p. 3081, provided, “If any provision of this act is declared unconstitutional or invalid, for any reason, the remainder of the act shall not thereby be invalidated but shall remain in full force and effect.”

30003. Cigarette. “Cigarette” means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape and irrespective of whether the tobacco is flavored, adulterated or mixed with any other

* The provisions of this part, except as otherwise noted, became effective June 17, 1959. The tax was imposed beginning July 1, 1959.

ingredient, where such roll has a wrapper or cover made of paper or any other material, except where such wrapper is wholly or in the greater part made of tobacco and such roll weighs over three pounds per thousand.

30005. Untaxed cigarette. “Untaxed cigarette” means any cigarette which has not yet been distributed in such manner as to result in a tax liability under this part.

30005.5. Untaxed tobacco product. “Untaxed tobacco product” means either of the following:

(a) Any tobacco product that has not yet been distributed in a manner that results in a tax liability under this part.

(b) Any tobacco product that was distributed in a manner that resulted in a tax liability under this part, but that was returned to the distributor after the tax was paid and for which the distributor has either claimed a deduction pursuant to subdivision (c) of Section 30123, or a refund or credit pursuant to Section 30176.2 or Section 30178.2.

History.—Added by Stats. 1989, Ch. 634, in effect September 21, 1989. Stats. 2001, Ch. 426 (SB 312), in effect October 2, 2001, substituted “either of the following:” for “any” after “means” in the first paragraph; added subdivision letter designation (a) before “Any tobacco product”; added “Any” before “tobacco product that has not yet”, and substituted “that” for “which” after “Any tobacco product” in subdivision (a); and added subdivision (b).

Note.—SEC. 7 of Stats. 2001, Ch. 426 (SB 312), effective October 2, 2001, states: The Legislature finds and declares that this act furthers and is consistent with the purposes expressed in Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as contained within the Tobacco Tax and Health Protection Act of 1988 (Proposition 99 of the November 8, 1988, general election), and Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as contained in the California Families and Children Act of 1998 (Proposition 10 of the November 3, 1998, general election).

30006. Sale. “Sale” includes any transfer of title or possession for a consideration, exchange or barter, in any manner or by any means whatever.

30008. Distribution. “Distribution” includes:

(a) The sale of untaxed cigarettes or tobacco products in this state.

(b) The use or consumption of untaxed cigarettes or tobacco products in this state.

(c) The placing in this state of untaxed cigarettes or tobacco products in a vending machine or in retail stock for the purpose of selling the cigarettes or tobacco products to consumers.

History.—Stats. 1961, p. 2499, operative July 1, 1961, combined and reworded former (a) and (c) as (a) and combined and reworded former (b) and (d) as (b). Stats. 1967, p. 2514, operative August 1, 1967, added (c). Stats. 1989, Ch. 634, in effect September 21, 1989, added “or tobacco products” after “cigarettes” in subdivisions (a), (b), and (c).

30009. Use or consumption. “Use or consumption” includes the exercise of any right or power over cigarettes or tobacco products incident to the ownership thereof, other than the sale of the cigarettes or tobacco products or the keeping or retention thereof by a licensed distributor for the purpose of sale.

History.—Stats. 1989, Ch. 634, in effect September 21, 1989, added “or tobacco products” after “cigarettes”. Stats. 1998, Ch. 420 (SB 2230), in effect January 1, 1999, added “by a licensed distributor” after “or retention thereof”.

30010. Person. “Person” includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, trustee,

syndicate, this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

History.—Stats. 1994, Ch. 1200, in effect September 30, 1994, substituted “partnership” for “copartnership”, added “limited liability company”, and changed “S” in state to lower case.

30011. **Distributor.** “Distributor” includes:

(a) Every person who, after 4 o’clock a.m. on July 1, 1959, and within the meaning of the term “distribution” as defined in this chapter, distributes cigarettes.

(b) Every person who, on or after 12:01 a.m. on January 1, 1989, and within the meaning of the term “distribution” as defined in this chapter, distributes tobacco products.

(c) Every person who sells or accepts orders for cigarettes or tobacco products which are to be transported from a point outside this State to a consumer within this State.

History.—Stats. 1989, Ch. 634, in effect September 21, 1989, added subdivision (b), substituted “(c)” for “(b)”, and added “or tobacco products” after “cigarettes” in subdivision (c).

30012. **Dealer.** “Dealer” includes every person, other than one holding a distributor’s or wholesaler’s license, who engages in this state in the sale of cigarettes or tobacco products.

History.—Stats. 1968, p. 2249, in effect November 13, 1968, added “or wholesaler’s”. Stats. 1989, Ch. 634, in effect September 21, 1989, added “or tobacco products” after “cigarettes”.

30013. **In this State.** “In this State” or “in the State” means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States of America.

30014. **Transporter.** (a) “Transporter” means any person transporting into or within this state any of the following:

(1) Cigarettes not contained in packages to which are affixed California cigarette tax stamps or meter impressions.

(2) Tobacco products upon which the tobacco products surtax imposed by Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131) of Chapter 2 has not been paid.

(b) “Transporter” shall not include any of the following:

(1) A licensed distributor.

(2) A common carrier.

(3) A person transporting cigarettes and tobacco products under federal internal revenue bond or customs control that are non-tax-paid under Chapter 52 of the Internal Revenue Act of 1954 as amended.

History.—Stats. 1967, p. 2514, operative August 1, 1967, completely revised this section. Stats 1989, Ch. 634, in effect September 21, 1989, added “(a)” before “Transporter”, added “any of the following:” after “within this state”, added “(1)”, substituted “Cigarettes” for “cigarettes”, deleted “However, transporter shall not include:”, added subdivision (2), added “(b) ‘transporter’ shall not include any of the following:”, and substituted “1”, “2”, and “3” for “a”, “b” and “c” in subdivision (b). Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, added “and Article 3 (commencing with Section 30131)” after “by Article 2 (commencing with Section 30121)” in subdivision (a) paragraph (2).

30015. **Package.** “Package” means the individual packet, box or other container in which retail sales of cigarettes are normally made or intended to be made. “Package” does not include such containers as cartons, cases, bales or boxes which contain smaller packaging units of cigarettes.

History.—Stats. 1967, p. 2515, operative August 1, 1967, substituted “packet” for “package” in the first sentence and added the second sentence.

30016. Wholesaler. “Wholesaler” includes: (a) Any person, other than a licensed distributor, who engages in this state in making sales for resale of cigarettes that are contained in packages to which are affixed stamps or meter impressions.

(b) Any person, other than a licensed distributor, who engages in this state in making sales for resale of tobacco products on which the tax imposed in Sections 30123 and 30131.2 has been paid.

History.—Added by Stats. 1968, p. 2249, in effect November 13, 1968. Stats. 1998, Ch. 420 (SB 2230), in effect January 1, 1999, substituted “includes: (a) Any” for “includes any” after “Wholesaler” and substituted “that” for “, which” after “resale of cigarettes” in subdivision (a); and added subdivision (b). Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, substituted “Sections” for “Section” after “on which the tax imposed in” and added “and 30131.2” after “imposed in Sections 30123” in subdivision (b).

30017. Wholesale cost. “Wholesale cost” means the cost of tobacco products to the distributor prior to any discounts or trade allowances.

History.—Added by Stats. 1989, Ch. 634, in effect September 21, 1989.

30018. Stamps and meter impressions. (a) “Stamps and meter impressions” means the indicia of payment of tax, as required by Section 30161, and include, but are not limited to, stamps, meter impressions, or any other indicia developed using current technology.

(b) The board shall prescribe and approve the types of stamps and meter impressions, and the methods of applying stamps and meter impressions to packages of cigarettes.

History.—Added by Stats. 2002, Ch. 1124 (AB 3000), in effect September 30, 2002.

30019. Importer. “Importer” means any purchaser for resale in the United States of cigarettes manufactured outside of the United States.

History.—Added by Stats. 2003, Ch. 890 (AB 71), in effect January 1, 2004.

CHAPTER 2. IMPOSITION OF TAX

- | | |
|------------|--|
| Article 1. | Tax on Distributors. §§ 30101–30111. |
| 2. | Cigarette and Tobacco Products Surtax. §§ 30121–30130. |
| 3. | California Children and Families First Trust Fund Account. §§ 30131–30131.6. |

Article 1. Tax on Distributors

- | | |
|------------|--|
| § 30101. | Rate of tax. |
| § 30101.7. | Face-to-face sale. |
| § 30102. | Sale to certain federal instrumentalities. |
| § 30102.5. | Distribution under internal revenue bond or customs control. |
| § 30103. | Sale by manufacturer. |
| § 30103.5. | Sale or transfer to law enforcement. |
| § 30104. | Common carrier of passengers. |
| § 30105. | Sale by original importer. |
| § 30105.5. | Sale or gift to veterans’ institutions. |
| § 30106. | Consumer exemption. |
| § 30107. | Payment by consumer. |
| § 30108. | Collection by distributor. |
| § 30109. | Presumption of distribution. |
| § 30110. | Claim for exemption. |
| § 30111. | In lieu tax. Subject to sales and use taxes. |

30101. Rate of tax. Every distributor shall pay a tax upon his or her distributions of cigarettes at the rate of one and one-half mills (\$0.0015) for the distribution after 4:00 a.m. on July 1, 1959, of each cigarette until 12:01

a.m. on August 1, 1967, at the rate of three and one-half mills (\$.0035) for the distribution of each cigarette on and after August 1, 1967, until 12:01 a.m. on October 1, 1967, at the rate of five mills (\$.005) on and after 12:01 a.m. on October 1, 1967, until 12:01 a.m. on January 1, 1994, and at the rate of six mills (\$.006) on and after 12:01 a.m. on January 1, 1994.

History.—Stats. 1967, p. 2515, operative August 1, 1967, added all language following “July 1, 1959, of each cigarette.” Stats. 1993, Ch. 660, in effect October 1, 1993, but operative January 1, 1994, added “or her” following “his”; deleted “and” following “on August 1, 1967,”; deleted “and” before “at the rate of five mills”; and added “until 12:01 a.m. on January . . . January 1, 1994” to the end of the section. Stats. 1994, Ch. 146, in effect January 1, 1995, substituted “4:00” for “4 o’clock” before “a.m. on July 1, 1959”; deleted “o’clock” after “until 12:01” before “a.m. on August” and “a.m. on October”.

30101.7. Face-to-face sale. (a) It is the intent of the Legislature in enacting this section to facilitate the collection of all applicable state surtaxes and sales or use taxes on cigarettes sold to residents of the state.

(b) Except as provided in subdivision (d), no person may engage in a retail sale of cigarettes in California unless the sale is a vendor-assisted, face-to-face sale.

(c) For the purposes of this section, “face-to-face sale” means a sale in which the purchaser is in the physical presence of the seller or the seller’s employee or agent at the time of the sale. A face-to-face sale does not include any transaction conducted by mail order, the Internet, telephone, or any other anonymous transaction method in which the buyer is not in the seller’s physical presence or the physical presence of the seller’s employee or agent at the time of the sale.

(d) A person may engage in a non-face-to-face sale of cigarettes to a person in California provided that both of the following conditions are met:

(1) The seller has fully complied with all of the requirements of Chapter 10A (commencing with Section 375) of Title 15 of the United States Code, otherwise known as the Jenkins Act.

(2) The seller has fully complied with either of the following requirements:

(A) All applicable California taxes on the cigarettes have been paid.

(B) The seller includes on the outside of the shipping container for any cigarettes shipped to a resident in California from any source in the United States an externally visible and easily legible notice located on the same side of the shipping container as the address to which the package is delivered stating as follows:

“IF THESE CIGARETTES HAVE BEEN SHIPPED TO YOU FROM A SELLER LOCATED OUTSIDE OF THE STATE IN WHICH YOU RESIDE, THE SELLER HAS REPORTED PURSUANT TO FEDERAL LAW THE SALE OF THESE CIGARETTES TO YOUR STATE TAX COLLECTION AGENCY, INCLUDING YOUR NAME AND ADDRESS. YOU ARE LEGALLY RESPONSIBLE FOR ALL APPLICABLE UNPAID STATE TAXES ON THESE CIGARETTES.”

(e) The State Board of Equalization shall provide information relative to a seller’s failure or attempt to comply with the Jenkins Act to the Attorney General.

(f) The Attorney General or a city attorney, county counsel, or district attorney may bring a civil action to enforce this section against any person that violates this section and, in addition to any other remedies provided by law, the court shall assess a civil penalty in accordance with the following schedule:

(1) A civil penalty of not less than one thousand dollars (\$1,000) and not more than two thousand dollars (\$2,000) for the first violation.

(2) A civil penalty of not less than two thousand five hundred dollars (\$2,500) and not more than three thousand five hundred dollars (\$3,500) for the second violation within a five-year period.

(3) A civil penalty of not less than four thousand dollars (\$4,000) and not more than five thousand dollars (\$5,000) for the third violation within a five-year period.

(4) A civil penalty of not less than five thousand five hundred dollars (\$5,500) and not more than six thousand five hundred dollars (\$6,500) for a fourth violation within a five-year period.

(5) A civil penalty of ten thousand dollars (\$10,000) for a fifth or subsequent violation within a five-year period.

(g) The Attorney General shall provide an annual report to the Legislature regarding all actions taken to comply with, and enforce, the Jenkins Act.

(h) This section does not prohibit any lawful sale of a tobacco product that occurs by means of a vending machine.

(i) Nothing in this section shall relieve the seller of cigarettes from any other applicable requirement of state law relating to the sale of cigarettes.

(j) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

History.—Added by Stats. 2001, Ch. 686 (SB 1766), in effect January 1, 2003. Stats. 2003, Ch. 603 (SB 1016), in effect January 1, 2004, substituted “both” for “either” after “provided that” and substituted “are” for “is” after “following conditions”, added paragraphs (1) and (2), letter former paragraph (1) and (2) as subparagraphs (A) and (B), respectively, in subdivision (d); added subdivisions (e) and (g); and relettered former subdivisions (e), (f), (g), and (h) as subdivisions (f), (h), (i), and (j), respectively.

30102. Sale to certain federal instrumentalities. (a) The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products to either of the following:

(1) United States Army, Air Force, Navy, Marine Corps or Coast Guard exchanges and commissaries and Navy or Coast Guard ships’ stores.

(2) The United States Veterans’ Administration.

(b) This section shall remain in effect only until the first day of the first calendar month commencing more than 60 days after existing federal law is amended by Congress to permit state taxation of sales of cigarettes by or through federal military installations.

History.—Added by Stats. 1976, Ch. 206, effective June 7, 1976, through January 1, 1980. Stats. 1979, Ch. 712, effective September 18, 1979, changed January 1, 1980, expiration date to the first day of the first calendar month commencing more than 60 days after the existing federal law is amended by Congress to permit state taxation of sales of cigarettes by or through federal military installations. Stats. 1989, Ch. 634, in effect September 21, 1989, added “or tobacco

products" after "cigarettes", added "either of the following" after "tobacco products to", substituted a period for " , or" after "ships' stores" in subdivision (a), and substituted "The" for "the" and "Veterans" for "Veterans" in subdivision (b). Stats. 1992, Ch. 1336, in effect January 1, 1993, added the subdivision letter (a) to the beginning of the section; and relettered former subdivisions (a) and (b) as (1) and (2), respectively; and added subdivision (b).

30102.5. Distribution under internal revenue bond or customs control. The taxes imposed by this part shall not apply to the distribution of cigarettes or tobacco products that are non-tax-paid under Chapter 52 of the Internal Revenue Act of 1954 as amended, and the cigarettes are under internal revenue bond or customs control.

History.—Added by Stats. 1961, p. 1183, in effect September 15, 1961. Stats. 1967, p. 2515, operative August 1, 1967, deleted the former language exempting sales to veterans' homes, etc., and added everything following "shall not apply to." Stats. 1989, Ch. 634, in effect September 21, 1989, added "or tobacco products" after "distribution of cigarettes".

30103. Sale by manufacturer. The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products by the manufacturer to a licensed distributor.

History.—Stats. 1961, p. 2499, operative July 1, 1961, substituted "the sale" for "distributions". Stats. 1989, Ch. 634, in effect September 21, 1989, added "or tobacco products" after "cigarettes".

30103.5. Sale or transfer to law enforcement. (a) The tax and surcharge imposed by this part shall not apply to the sale or transfer of untaxed cigarettes or tobacco products to a law enforcement agency for use in a criminal investigation when that sale or transfer is authorized by the board.

(b) A law enforcement agency authorized by the board to receive or purchase cigarettes or tobacco products as provided in subdivision (a) shall not be required to apply for, or obtain, a license as a distributor pursuant to Section 30140.

(c) A law enforcement agency making distributions of cigarettes and tobacco products received or purchased under subdivision (a) is not required to collect or remit the tax or surcharge imposed by this part with respect to those authorized distributions.

History.—Added by Stats. 1995, Ch. 555, in effect January 1, 1996. Stats. 1999, Ch. 941 (SB 1231), in effect January 1, 2000, added "or tobacco products" after "of untaxed cigarettes" in subdivision (a), added "or tobacco products" after "or purchase cigarettes" in subdivision (b), and added "and tobacco products" after "distribution of cigarettes" in subdivision (c).

30104. Common carrier of passengers. The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products by a distributor to a common carrier engaged in interstate or foreign passenger service or to a person authorized to sell cigarettes or tobacco products on the facilities of the carrier. Whenever cigarettes or tobacco products are sold by distributors to common carriers engaged in interstate or foreign passenger service for use or sale on facilities of the carriers, or to persons authorized to sell cigarettes or tobacco products on those facilities, the tax imposed by Section 30101 and 30123, and 30131.2 shall not be levied with respect to the sales of the cigarettes or tobacco products by the distributors, but a tax is hereby levied upon the carriers or upon the persons authorized to sell cigarettes or tobacco products on the facilities of the carriers, as the case may be, for the privilege of making sales in California at the same rate as set forth in Section 30101 and 30123, and 30131.2. Those common carriers and

authorized persons shall pay the tax imposed by this section and file reports with the board, as provided in Section 30186.

History.—Stats. 1989, Ch. 634, in effect September 21, 1989, added “or tobacco products” after “cigarettes” and “and 30123” after “Section 30101” throughout the section, and substituted “Those” for “Such” in the last sentence. Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, substituted “the” for “such” after “the facilities of” in the first sentence; and added “, and 30131.2” after “the tax imposed by Section 30101 and 30123”, deleted “such” after “the privilege of making”, and added “, and 30131.2” after “set forth in Section 30101 and 30123” in the second sentence.

30105. Sale by original importer. The taxes imposed by this part shall not apply to the sale of cigarettes or tobacco products by the original importer to a licensed distributor if the cigarettes or tobacco products are manufactured outside the United States.

History.—Added by Stats. 1985, Ch. 35, effective May 7, 1985. Stats. 1989, Ch. 634, in effect September 21, 1989, added “or tobacco products” after “cigarettes” throughout the text.

30105.5. Sale or gift to veterans’ institutions. The taxes imposed by this part shall not apply to the sale or gift of federally tax-free cigarettes or tobacco products when the cigarettes or tobacco products are delivered directly from the manufacturer under Internal Revenue bond to a veterans’ home of the State of California or a hospital or domiciliary facility of the United States Veterans’ Administration for gratuitous issue to veterans receiving hospitalization or domiciliary care. The tax shall not be imposed with respect to the use or consumption of such cigarettes or tobacco products by the institution or by the veteran patients or domiciliaries.

History.—Added by Stats. 1961, p. 1484, in effect September 15, 1961. Stats. 1989, Ch. 634, in effect September 21, 1989, added “or tobacco products” after “cigarettes” throughout the text, and substituted “Veterans’ ” for “Veterans” in the first sentence.

30106. Consumer exemption. The taxes imposed by this part shall not apply to the use or consumption of untaxed cigarettes transported or brought into this state in a single lot or shipment of not more than 400 cigarettes by an individual for his own use or consumption, or of not more than 400 untaxed cigarettes obtained at one time from any of the instrumentalities listed in Section 30102.

History.—Stats. 1961, p. 2500, operative July 1, 1961, added the first sentence which was derived in part from former subdivision (d) of Section 30008 and substituted “(b)” for “(d)” in the second sentence. Stats. 1967, p. 2515, operative August 1, 1967, deleted the former last sentence which required the consumer to pay the tax on untaxed cigarettes consumed in this state. Stats. 1968, p. 2121, in effect November 13, 1968, increased from 200 to 400 the number of exempt cigarettes. Stats. 1970, p. 1058, operative November 23, 1970. Adds “or brought” following word “transported”, adds “by an individual for his own use or consumption” following “400 cigarettes”.

30107. Payment by consumer. The taxes resulting from a distribution of cigarettes or tobacco products within the meaning of subdivision (b) of Section 30008 shall be paid by the user or consumer.

History.—Added by Stats. 1967, p. 2516, operative August 1, 1967, formerly the last sentence of Section 30106. Stats. 1989, Ch. 634, in effect September 21, 1989, added “or tobacco products” after “cigarettes”.

30108. Collection by distributor. (a) Every distributor engaged in business in this state and selling or accepting orders for cigarettes or tobacco products with respect to the sale of which the tax imposed by Section 30101 and 30123, and 30131.2 is inapplicable shall, at the time of making the sale or accepting the order or, if the purchaser is not then obligated to pay the tax with respect to his or her distribution of the cigarettes or tobacco products, at the time the purchaser becomes so obligated, collect the tax from the

purchaser, if the purchaser is other than a licensed distributor, and shall give to the purchaser a receipt therefor in the manner and form prescribed by the board.

(b) Every person engaged in business in this state and making gifts of untaxed cigarettes or tobacco products as samples with respect to which the tax imposed by Section 30101 and 30123, and 30131.2 is inapplicable shall, at the time of making the gift or, if the donee is not then obligated to pay the tax with respect to his or her distribution of the cigarettes or tobacco products, at the time the donee becomes so obligated, collect the tax from the donee, if the donee is other than a licensed distributor, and shall give the donee a receipt therefor in the manner and form prescribed by the board. This section shall not apply to those distributions of cigarettes or tobacco products which are exempt from tax under Section 30105.5.

(c) “Engaged in business in the state” means and includes any of the following:

(1) Maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.

(2) Having any representative, agent, salesperson, canvasser or solicitor operating in this state under the authority of the distributor or its subsidiary for the purpose of selling, delivering, or the taking of orders for cigarettes or tobacco products.

(d) The taxes required to be collected by this section constitute debts owed by the distributor, or other person required to collect the taxes, to the state.

History.—Stats. 1961, p. 2500, operative July 1, 1961, revised the wording of the first paragraph. Stats. 1971, p. 420, in effect March 4, 1972. Reletters the section and imposes the tax on samples in new (b) and adds (c) and (d). Stats. 1989, Ch. 634, in effect September 21, 1989, added “or tobacco products” after “cigarettes”, added “and 30123” after “Section 30101”, and added “or her” after “his” throughout the text, and added a comma after “storage place” in subdivision (c)(1). Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, added “, and 30131.2” after “Section 30101 and 30123” in subdivisions (a) and (b); and substituted “salesperson” for “salesman” after “Having any representative, agent,” in subdivision (c) paragraph (2).

Indian tribe must collect tax.—Legal incidence of cigarette tax falls on non-Indian purchasers of cigarettes purchased from Indian tribe, and state may require the tribe to collect the tax. *Cal. State Board of Equalization v. Chemehuevi Indian Tribe*, (1985) 474 U.S. ___, 88 L. Ed. 2d 9.

Indian tribe still must collect tax.—Federal laws related to Indian economic development and financing did not preempt the state cigarette tax. The state’s interest in raising revenue did not interfere with tribal government, and the state was not required to share its revenue with the tribe. *Chemehuevi Indian Tribe v. California State Board of Equalization*, (1986) 800 F.2d 1446.

30109. Presumption of distribution. Unless the contrary is established, it shall be presumed that all cigarettes or tobacco products acquired by a distributor are untaxed cigarettes or tobacco products, and that all cigarettes or tobacco products manufactured in this state or transported to this state, and no longer in the possession of the distributor, have been distributed.

History.—Stats. 1989, Ch. 634, in effect September 21, 1989, added “or tobacco products” after “cigarettes” and substituted “state” for “State” throughout the text.

30110. **Claim for exemption.** Any claim for exemption from tax under this part shall be made to the board in such manner as the board shall prescribe.

30111. **In lieu tax. Subject to sales and use taxes.** The taxes imposed by this part are in lieu of all other state, county, municipal, or district taxes on the privilege of distributing cigarettes or tobacco products.

This section does not prohibit the application of Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251) or Article 2 (commencing with Section 37021) of Part 17 to the sale, storage, use or other consumption of cigarettes or tobacco products.

History.—Stats. 1968, p. 1797, in effect November 13, 1968, added “or Article 2 . . . of Part 17”. Stats. 1969, p. 123, in effect November 10, 1969, added the reference to Part 1.6 and substituted “this division” for “Division 2 of this code”, in the second paragraph. Stats. 1989, Ch. 634, in effect September 21, 1989, added “or tobacco products” after “cigarettes” throughout the text and deleted “of this division” after “Part 17” in the second paragraph.

Article 2. Floor Stocks and Indicia Adjustment Taxes [Repealed.] *

- § 30121. Rate, dealer. [Repealed.]
- § 30122. Dealer’s report. [Repealed.]
- § 30123. Rate, distributor; discount. [Repealed.]
- § 30124. Distributor’s report. [Repealed.]
- § 30125. Due date; interest. [Repealed.]
- § 30126. Exclusions. [Repealed.]

Article 2. Cigarette and Tobacco Products Surtax †

- § 30121. Definitions.
- § 30122. Cigarette and tobacco products surtax fund.
- § 30123. Rate of tax; cigarettes; tobacco products.
- § 30124. Disposition of fund.
- § 30125. Use of funds.
- § 30126. Determination of tobacco products tax rate.
- § 30128. Effective date; article.
- § 30129. Imposition of tax; effective date.
- § 30130. Amendments to article.

30121. **Definitions.** For purposes of this article:

(a) “Cigarettes” has the same meaning as in Section 30003, as it read on January 1, 1988.

(b) “Tobacco products” includes, but is not limited to, all forms of cigars, smoking tobacco, chewing tobacco, snuff, and any other articles or products made of, or containing at least 50 percent, tobacco, but does not include cigarettes.

(c) “Fund” means the Cigarette and Tobacco Products Surtax Fund created by Section 30122.

Tobacco Tax and Health Protection Act of 1988 (Proposition 99) is Constitutional.—A statutory initiative, approved by a majority of the electorate, that increases taxes on cigarettes and other tobacco related products and allocates the revenue raised to address tobacco related problems does not violate the provisions of the California State Constitution related to changes in State taxes for the purpose of increasing revenue (ART. XIII A §§3 & 4) or the single subject rule. (ART. II §8(d)) *Kennedy Wholesale, Inc. v. State Board of Equalization*, (1991) 53 Cal.3d 245.

* Article 2 was repealed by Stats. 1982, Ch. 454, in effect January 1, 1983.

† Article 2 adopted by voters, Prop 99 Sec. 4, in effect January 1, 1989.

30122. **Cigarette and tobacco products surtax fund.** (a) The Cigarette and Tobacco Products Surtax Fund is hereby created in the State Treasury. The fund shall consist of all revenues deposited therein pursuant to this article. Moneys in the fund may only be appropriated for the following purposes:

- (1) Tobacco-related school and community health education programs.
- (2) Tobacco-related disease research.
- (3) Medical and hospital care and treatment of patients who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

- (4) Programs for fire prevention; environmental conservation; protection, restoration, enhancement, and maintenance of fish, waterfowl, and wildlife habitat areas; and enhancement of state and local park and recreation purposes.

(b) The fund consists of six separate accounts, as follows:

- (1) The Health Education Account, which shall only be available for appropriation for programs for the prevention and reduction of tobacco use, primarily among children, through school and community health education programs.

- (2) The Hospital Services Account, which shall only be available for appropriation for payment to public and private hospitals licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code for the treatment of hospital patients who cannot afford to pay for that treatment and for whom payment for hospital services will not be made through private coverage or by any program funded in whole or in part by the federal government.

- (3) The Physician Services Account, which shall only be available for appropriation for payment to physicians for services to patients who cannot afford to pay for those services, and for whom payment for physician services will not be made through private coverage or by any program funded in whole or in part by the federal government.

- (4) The Research Account, which shall only be available for appropriation for tobacco-related disease research.

- (5) The Public Resources Account, which shall only be available for appropriation in equal amounts for both of the following:

- (A) Programs to protect, restore, enhance, or maintain fish, waterfowl, and wildlife habitat on an equally funded basis.

- (B) Programs to enhance state and local park and recreation resources.

- (6) The Unallocated Account, which shall be available for appropriation for any purpose specified in subdivision (a).

30123. **Rate of tax; cigarettes; tobacco products.** (a) In addition to the tax imposed upon the distribution of cigarettes by this chapter, there shall be imposed upon every distributor a tax upon the distribution of cigarettes at the rate of twelve and one-half mills (\$0.0125) for each cigarette distributed.

(b) There shall be imposed upon every distributor a tax upon the distribution of tobacco products, based on the wholesale cost of these products, at a tax rate, as determined annually by the State Board of Equalization, which is equivalent to the combined rate of tax imposed on cigarettes by subdivision (a) and the other provisions of this part.

(c) The wholesale cost used to calculate the amount of tax due under subdivision (b) does not include the wholesale cost of tobacco products that were returned by a customer during the same reporting period in which the tobacco products were distributed, when the distributor refunds the entire amount the customer paid for the tobacco products either in cash or credit. For purposes of this subdivision, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs is refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

History.— Stats. 2001, Ch. 426 (SB 312), in effect October 2, 2001, added subdivision (c).

Note.—SEC. 7 of Stats. 2001, Ch. 426 (SB 312), effective October 2, 2001, states: The Legislature finds and declares that this act furthers and is consistent with the purposes expressed in Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as contained within the Tobacco Tax and Health Protection Act of 1988 (Proposition 99 of the November 8, 1988, general election), and Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as contained in the California Families and Children Act of 1998 (Proposition 10 of the November 3, 1998, general election).

| Text of section operative to June 30, 1996

30124. **Disposition of fund.** (a) With the exception of payments of refunds made pursuant to Article 1 (commencing with Section 30361) of Chapter 6, and reimbursement of the State Board of Equalization for expenses incurred in the administration and collection of the tax imposed by Section 30123, pursuant to its powers vested by this part, all moneys raised pursuant to the taxes imposed by Section 30123 shall be deposited into the fund as provided in subdivision (b).

(b) Moneys shall be deposited in the fund according to the following formula:

- (1) Ten percent shall be deposited in the Health Education Account.
- (2) Thirty-five percent shall be deposited in the Hospital Services Account.
- (3) Twenty-two and one-half percent shall be deposited in the Physician Services Account.
- (4) One percent shall be deposited in the Research Account.
- (5) Five percent shall be deposited in the Public Resources Account.
- (6) Twenty-six and one-half percent shall be deposited in the Unallocated Account.

(c) Any amounts appropriated from any account specified in subdivision (b) which is not encumbered within the period prescribed by law shall revert to the account from which it was appropriated.

(d) This section shall remain operative only until July 1, 1996, shall remain in effect only until January 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1997, deletes or extends that date.

History.—Stats. 1995, Ch. 194, in effect July 27, 1995, substituted “Ten” for “Twenty” before “percent shall be” in paragraph (1) of, substituted “Twenty-two and one-half” for “Ten” before “percent shall be” in paragraph (3) of, substituted “One” for “Five” before “percent shall be” in paragraph (4) of, substituted “Twenty-six and one-half” for “Twenty-five” before “percent shall be” in paragraph (6) of, subdivision (b); and added subdivision (d).

Text of section operative July 1, 1996

30124. Disposition of fund. (a) With the exception of payments of refunds made pursuant to Article 1 (commencing with Section 30361) of Chapter 6, and reimbursement of the State Board of Equalization for expenses incurred in the administration and collection of the tax imposed by Section 30123, pursuant to its powers vested by this part, all moneys raised pursuant to the taxes imposed by Section 30123 shall be deposited into the fund as provided in subdivision (b).

(b) Moneys shall be deposited in the fund according to the following formula:

(1) Twenty percent shall be deposited in the Health Education Account.

(2) Thirty-five percent shall be deposited in the Hospital Services Account.

(3) Ten percent shall be deposited in the Physician Services Account.

(4) Five percent shall be deposited in the Research Account.

(5) Five percent shall be deposited in the Public Resources Account.

(6) Twenty-five percent shall be deposited in the Unallocated Account.

(c) Any amounts appropriated from any account specified in subdivision (b) which is not encumbered within the period prescribed by law shall revert to the account from which it was appropriated.

(d) This section shall become operative July 1, 1996.

History.—Added by Stats. 1995, Ch. 194, in effect July 27, 1995, but operative July 1, 1996.

30125. Use of funds. Funds expended pursuant to this article shall be used only for the purposes expressed in this article and shall be used to supplement existing levels of service and not to fund existing levels of service. The fund and accounts in the fund may be used for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code. The loans shall be repaid with interest from the General Fund at the Pooled Money Investment Account rate.

History.—Stats. 1994, Ch. 136, in effect July 5, 1994, added “The fund and . . . Investment Account rate.” as the second and third sentences.

30126. Determination of tobacco products tax rate. The annual determination required of the State Board of Equalization pursuant to subdivision (b) of Section 30123 shall be made based on the wholesale cost of tobacco products as of March 1, and shall be effective during the state’s next fiscal year.

30128. **Effective date; article.** This article shall take effect on January 1, 1989.

30129. **Imposition of tax; effective date.** The tax imposed by Section 30123 shall be imposed on every cigarette and tobacco product in the possession or under the control of every dealer and distributor on and after 12:01 a.m. on January 1, 1989, pursuant to rules and regulations promulgated by the State Board of Equalization.

30130. **Amendments to article.** This article may be amended only by vote of four-fifths of the membership of both houses of the Legislature. All amendments to this article must be consistent with its purposes.

Article 3. California Children and Families First
Trust Fund Account *

- § 30131. Purpose.
- § 30131.1. Definitions.
- § 30131.2. Rate of tax; cigarettes; tobacco products.
- § 30131.3. Disposition of funds.
- § 30131.4. Use of funds.
- § 30131.5. Determination of tobacco products tax rate.
- § 30131.6. Imposition of tax; effective date.

30131. **Purpose.** Notwithstanding Section 30122, the California Children and Families Trust Fund is hereby created in the State Treasury for the exclusive purpose of funding those provisions of the California Children and Families Act of 1998 that are set forth in Division 108 (commencing with Section 130100) of the Health and Safety Code.

History.—Stats. 1999, Ch. 126 (AB 1576), in effect January 1, 2000, deleted “First” after “Children and Families.”

30131.1. **Definitions.** The following definitions apply for purposes of this article:

(a) “Cigarette” has the same meaning as in Section 30003, as it read on January 1, 1997.

(b) “Tobacco products” includes, but is not limited to, all forms of cigars, smoking tobacco, chewing tobacco, snuff, and any other articles or products made of, or containing at least 50 percent, tobacco, but does not include cigarettes.

30131.2. **Rate of tax; cigarettes; tobacco products.** (a) In addition to the taxes imposed upon the distribution of cigarettes by Article 1 (commencing with Section 30101) and Article 2 (commencing with Section 30121) and any other taxes in this chapter, there shall be imposed an additional surtax upon every distributor of cigarettes at the rate of twenty-five mills (\$0.025) for each cigarette distributed.

(b) In addition to the taxes imposed upon the distribution of tobacco products by Article 1 (commencing with Section 30101) and Article 2 (commencing with Section 30121), and any other taxes in this chapter, there shall be imposed an additional tax upon every distributor of tobacco

* Article 3 adopted by voters, Proposition 10, Sec. 6, in effect January 1, 1999.

products, based on the wholesale cost of these products, at a tax rate, as determined annually by the State Board of Equalization, which is equivalent to the rate of tax imposed on cigarettes by subdivision (a).

(c) The wholesale cost used to calculate the amount of tax due under subdivision (b) does not include the wholesale cost of tobacco products that were returned by a customer during the same reporting period in which the tobacco products were distributed, when the distributor refunds the entire amount the customer paid for the tobacco products either in cash or credit. For purposes of this subdivision, refund or credit of the entire amount shall be deemed to be given when the purchase price less rehandling and restocking costs is refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

History.—Stats. 2001, Ch. 426 (SB 312), in effect October 2, 2001, added subdivision (c).

Note.—SEC. 7 of Stats. 2001, Ch. 426 (SB 312), effective October 2, 2001, states: The Legislature finds and declares that this act furthers and is consistent with the purposes expressed in Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as contained within the Tobacco Tax and Health Protection Act of 1988 (Proposition 99 of the November 8, 1988, general election), and Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as contained in the California Families and Children Act of 1998 (Proposition 10 of the November 3, 1998, general election).

30131.3. Disposition of funds. Except for payments of refunds made pursuant to Article 1 (commencing with Section 30361) of Chapter 6, reimbursement of the State Board of Equalization for expenses incurred in the administration and collection of the taxes imposed by Section 30131.2, and transfers of funds in accordance with subdivision (c) of Section 130105 of the Health and Safety Code, all moneys raised pursuant to the taxes imposed by Section 30131.2 shall be deposited in the California Children and Families Trust Fund and are continuously appropriated for the exclusive purpose of the California Children and Families Program established by Division 108 (commencing with Section 130100) of the Health and Safety Code.

History.—Stats. 1999, Ch. 126 (AB 1576), in effect January 1, 2000, deleted “First” after “Children and Families.”

30131.4. Use of funds. All moneys raised pursuant to taxes imposed by Section 30131.2 shall be appropriated and expended only for the purposes expressed in the California Children and Families Act, and shall be used only to supplement existing levels of service and not to fund existing levels of service. No moneys in the California Children and Families Trust Fund shall be used to supplant state or local General Fund money for any purpose.

History.—Stats. 1999, Ch. 126 (AB 1576), in effect January 1, 2000, deleted “First” after “Children and Families.”

30131.5. Determination of tobacco products tax rate. The annual determination required of the State Board of Equalization pursuant to subdivision (b) of Section 30131.2 shall be made based on the wholesale cost of tobacco products as of March 1, and shall be effective during the state’s next fiscal year.

30131.6. Imposition of tax; effective date. The taxes imposed by Section 30131.2 shall be imposed on every cigarette and on tobacco products

in the possession or under the control of every dealer and distributor on and after 12:01 a.m. on January 1, 1999, pursuant to rules and regulations promulgated by the State Board of Equalization.

CHAPTER 3. LICENSES, BONDS AND REGISTRATION

- | | | |
|------------|---------------------|-----------------|
| Article 1. | Licenses and Bonds. | §§ 30140–30149. |
| 2. | Registration. | § 30151. |
| 3. | Wholesalers. | §§ 30155–30159. |

Article 1. Licenses and Bonds

- | | |
|------------|---|
| § 30140. | Distributor's license. |
| § 30140.1. | Licenses; persons not engaged in business in this State. |
| § 30141. | Bond requirements. |
| § 30142. | Amount of bond. |
| § 30143. | Withdrawal of surety. |
| § 30144. | Suspension of license. |
| § 30145. | Deposit of money or securities in lieu of bond. [Repealed.] |
| § 30146. | Liquidation of security. |
| § 30147. | Issuance and display of license. |
| § 30148. | Revocation of license. |
| § 30149. | Misdemeanor. |

30140. Distributor's license. Every person desiring to engage in the sale of cigarettes or tobacco products as a distributor (including a common carrier or authorized person mentioned in Section 30104), except a person who desires merely to sell or accept orders for cigarettes or tobacco products which are to be transported from a point outside this state to a consumer within this state, shall file with the board an application, in such form as the board may prescribe, for a distributor's license. A distributor shall apply for and obtain a license for each place of business at which he engages in the business of distributing cigarettes or tobacco products.

History.—Stats. 1967, p. 2519, operative August 1, 1967, added "(including a common carrier or authorized person mentioned in Section 30104)" to the first sentence. Stats. 1989, Ch. 634, in effect September 21, 1989, added "or tobacco products" after "cigarettes" throughout text.

30140.1. Licenses; persons not engaged in business in this State. (a) The board may adopt rules and regulations which provide for the issuance of a license to a person who is not engaged in business in this state.

(b) A holder of a license shall collect the tax imposed by this part, give receipts for the collected tax, and pay the tax to the board in the same manner as licensees engaged in business in this state.

History.—Added by Stats. 1989, Chapter 634, in effect September 21, 1989.

30141. Bond requirements. Every applicant for a license as a distributor shall file with the board, security in the amount and form as the board prescribes. Any security in the form of cash, insured deposits in banks or savings and loan institutions, or a bond or bonds duly executed by an admitted surety insurer, payable to the state, conditioned upon faithful performance of all the requirements of this part providing for the payment of all taxes, penalties, and other obligations of the person arising out of this part shall be held by the board in trust to be used solely in the manner provided in this section.

History.—Stats. 1982, Ch. 517, in effect January 1, 1983, substituted “an admitted surety insurer” for “him . . . surety” after “executed by.” Stats. 1993, Ch. 1113, in effect January 1, 1994, added “security” after “board,”; substituted “the” for “such” before “amount and”; substituted “the” for “such” after “amount and”; substituted a period for a comma after “prescribes”; added “Any security . . . institutions, or” after “prescribes”; added “duly” after “bonds”; substituted “state” for “people of the State of California” after “payable to the”; added “faithful performance . . . providing for” after “conditioned upon”; substituted “person” for “distributor” after “obligations of the”; substituted “out of” for “under” after “arising”; and added “shall be . . . this section” after “part”.

Text of section operative through December 31, 2006

30142. **Amount of bond.** (a) The board shall fix the amount of the security required of any distributor and may increase or reduce the amount at any time. A minimum security in the amount of one thousand dollars (\$1,000) shall be furnished by every distributor that is required to be licensed.

(b) If a distributor desires to defer payments for stamps or meter register settings, as provided in Article 2 (commencing with Section 30166) of Chapter 3.5, the board shall require a security as follows:

(1) If a distributor elects, under Section 30168, to make payments on a monthly basis, the board shall require a security equal to not less than 70 percent of the amount and no more than twice the amount, as fixed by the board, of the distributor’s purchases of stamps and meter register settings for which payment may be deferred.

(2) If a distributor elects, under Section 30168, to make payments on a twice-monthly basis, the board shall require a security equal to not less than 50 percent of the amount and no more than twice the amount, as fixed by the board, of the distributor’s purchases of stamps and meter register settings for which payment may be deferred.

(c) This section shall remain in effect until January 1, 2007, and as of that date is repealed.

History.—Stats. 1961, p. 2314, operative July 16, 1961, added the second and third sentences. Stats. 1967, p. 2519, operative August 1, 1967, substituted “seventy percent (70%) of” for “twice” and deleted “in a monthly period” following “payment may be deferred” in the last sentence. Stats. 1982, Ch. 454, in effect January 1, 1983, added “(commencing with Section 30161)” after “Article 2,” deleted “of this part” after “Chapter 3.5,” and substituted “70 percent” for “seventy percent (70%)” after “equal to” in the third sentence. Stats. 1993, Ch. 1113, in effect January 1, 1994, substituted “security” for “bond or bonds” following “amount of the” in the first sentence and before “in the amount” in the second sentence and following “shall require a” in the last sentence; and added “not less than” before “70 percent” and “and no more than twice the amount” following “of the amount” in the last sentence. Stats. 2003, Ch. 867 (AB 1666), in effect January 1, 2004, established the former first and second sentences as subdivision (a), added “that is” after “by every distributor” in the second sentence of subdivision (a); established the former third sentence as subdivision (b) and subdivision (b)(1), substituted “30166” for “30161” after “commencing with Section,” added “as follows:” after “require a security” and added “if a distributor elects . . . require a security” to paragraph (1), and added paragraph (2) to subdivision (b); and added subdivision (c).

Note.—SEC. 9. of Stats. 2003, Ch. 867 (AB 1666), effective January 1, 2004, states, The Legislative Analyst, with assistance of, and based on information provided by, the State Board of Equalization, shall, on or before January 1, 2006, prepare a report to the Legislature of the economic impact of this act. The report shall include an evaluation of the State Board of Equalization’s ability to collect cigarette tax revenues, additional revenues, if any, generated by the twice-monthly payment program, and the ability of distributors to access security bonds.

Text of section operative January 1, 2007

30142. **Amount of bond.** (a) The board shall fix the amount of the security required of any distributor and may increase or reduce the amount at any time. A minimum security in the amount of one thousand dollars (\$1,000) shall be furnished by every distributor that is required to be licensed.

(b) If a distributor desires to defer payments for stamps or meter register settings, as provided in Article 2 (commencing with Section 30166) of Chapter 3.5, the board shall require a security equal to not less than 70 percent of the amount and no more than twice the amount, as fixed by the board, of the distributor's purchases of stamps and meter register settings for which payment may be deferred.

(c) This section shall become operative on January 1, 2007.

History.—Added by Stats. 2003, Ch. 867 (AB 1666), in effect January 1, 2004.

Note.—SEC. 9. of Stats. 2003, Ch. 867 (AB 1666), effective January 1, 2004, states, The Legislative Analyst, with assistance of, and based on information provided by, the State Board of Equalization, shall, on or before January 1, 2006, prepare a report to the Legislature of the economic impact of this act. The report shall include an evaluation of the State Board of Equalization's ability to collect cigarette tax revenues, additional revenues, if any, generated by the twice-monthly payment program, and the ability of distributors to access security bonds.

30143. Withdrawal of surety. Every bond shall contain a provision substantially to the effect that when the surety exercises his right to withdraw as surety the withdrawal shall be effective on the first day of the calendar month after receipt of the notice by the board if the notice is received on or before the fifteenth day of the month, otherwise the withdrawal shall be effective on the first day of the second calendar month after receipt of the notice by the board.

30144. Suspension of license. The license of any distributor may be suspended without prior notice upon cancellation of his or her bond, or if the bond becomes void or unenforceable for any reason, or if the distributor fails to pay any amounts due under this part. The license shall be reinstated if the distributor files a valid bond, provides other security as defined in Section 30141 or pays the delinquent amounts, as the case may be. Upon the petition of any distributor whose license has been suspended under this section, a hearing shall be afforded him or her after five days' notice of the time and place of hearing.

History.—Stats. 1961, p. 2315, operative July 16, 1961, substituted "may be suspended without prior notice" for "shall be automatically suspended" and substituted "amounts" for "taxes or penalties" in the first sentence. The word "automatically" appearing before the word "reinstated" was deleted from the second sentence and "the delinquent amounts" was substituted for "his delinquent taxes". Stats. 1993, Ch. 1113, in effect January 1, 1994, added "or her" following "cancellation of his" in the first sentence and following "afforded him" in the last sentence; and added "provides other security as defined in Section 30141" following "a valid bond," in the second sentence.

30145. Deposit of money or securities in lieu of bond. [Repealed by Stats. 1982, Ch. 517, in effect January 1, 1983.]

30146. Liquidation of security. Upon receipt of a certificate of the board setting forth the amount of a distributor's delinquencies, the State Treasurer shall pay to the board the amount so certified from the money deposited with him by the distributor or from the amounts received from the sale of bonds or other obligations deposited with the Treasurer by the distributor. Securities deposited with the State Treasurer which have a prevailing market price may be sold by him for the purposes of this section at private sale at a price not lower than the prevailing market price thereof.

30147. Issuance and display of license. Upon receipt of a completed application and such bonds or other security as may be required by the board

under this part, the board shall issue to the applicant a license as a distributor. A separate license shall be issued for each place of business of the distributor within the State. A license is valid only for engaging in business as a distributor at the place designated thereon, and it shall at all times be conspicuously displayed at the place for which issued. The license is not transferable and is valid until canceled, suspended, or revoked.

30148. Revocation of license. Whenever any distributor fails to comply with any provision of this part or any rule or regulation of the board prescribed and adopted under this part, the board upon hearing, after giving the distributor at least 10 days' notice in writing specifying the time and place of hearing and requiring him to show cause why his license should not be revoked, may revoke the license held by him. The notice may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. The board shall not issue a new license to a distributor whose license has been revoked unless it is satisfied that he will comply with the provisions of this part and the rules and regulations of the board.

30149. Misdemeanor. Any person required to obtain a license as a distributor under this chapter who engages in business as a distributor without a license or after a license has been canceled, suspended, or revoked, and each officer of any corporation which so engages in business, is guilty of a misdemeanor.

Article 2. Registration

§ 30151. Registration of unlicensed distributors.

30151. Registration of unlicensed distributors. Every distributor, except one to whom a license is issued under Article 1 (commencing with Section 30140), required under Section 30108 to collect the tax imposed under this part from a purchaser shall register with the board and give the names and addresses of all agents operating in this state, the location of all distribution or sales houses or offices or other places of business in this state, and such other information as the board may require.

History.—Stats. 1961, p. 2315, operative July 16, 1961, renumbered this section without other change from former Section 30161. Stats. 1982, Ch. 454, in effect January 1, 1983, substituted "(commencing with Section 30140)" for "of this chapter" after "Article 1."

Article 3. Wholesalers *

- § 30155. Wholesaler's license.
- § 30156. Fee or bond prohibited.
- § 30157. Issuance and display of license.
- § 30158. Revocation of license.
- § 30159. Misdemeanor.

30155. Wholesaler's license. Every person desiring to engage in the sale of cigarettes or tobacco products as a wholesaler shall file with the board an application, in that form as the board may prescribe, for a wholesaler's

* Article 3 was added by Stats. 1968, p. 2249, in effect November 13, 1968.

license. A wholesaler shall apply for and obtain a license for each place of business at which he or she engages in the business of selling cigarettes or tobacco products as a wholesaler.

History.—Stats. 1994, Ch. 903, in effect January 1, 1995, added “or tobacco products” after “sale of cigarettes” in the first sentence and “of selling cigarettes” in the second sentence; substituted “that” for “such” after “an application, in” in the first sentence; and added “or she” after “at which he” in the second sentence.

30156. Fee or bond prohibited. No fee shall be charged nor shall a bond be required of any person for the issuance to him of a wholesaler’s license.

30157. Issuance and display of license. Upon receipt of a completed application, the board shall issue to the applicant a license as a wholesaler. A separate license shall be issued for each place of business of the wholesaler within the state. A license is valid only for engaging in business as a wholesaler at the place designated thereon, and it shall at all times be conspicuously displayed at the place for which issued. The license is not transferable and is valid until canceled, suspended, or revoked.

30158. Revocation of license. Whenever any wholesaler fails to comply with any provision of this part or any rule or regulation of the board prescribed and adopted under this part, the board upon hearing, after giving the wholesaler at least 10 days’ notice in writing specifying the time and place of hearing and requiring him to show cause why his license should not be revoked or suspended, may revoke or suspend the license held by him. The notice may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination. The board shall not issue a license to a wholesaler whose license has been revoked or suspended unless it is satisfied that he will comply with the provisions of this part and the rules and regulations of the board.

History.—Stats. 1970, p. 1058, operative November 23, 1970. Substitutes “wholesaler” for “distributor” in last sentence.

30159. Misdemeanor. Any person required to obtain a license as a wholesaler under this part who engages in business as a wholesaler without a license or after a license has been canceled, suspended, or revoked, and each officer of any corporation which so engages in business, is guilty of a misdemeanor.

CHAPTER 3.5. STAMPS AND METER MACHINES *

- Article 1. Use of Stamps and Impressions §§ 30161–30165.1.
2. Sale to Distributors. §§ 30166–30172.
 3. Determinations. §§ 30173–30175.
 4. Refunds. §§ 30176–30179.1
 5. Other Provisions Applicable. § 30180.

Article 1. Use of Stamps and Impressions

- § 30161. Tax payment by use of stamps and impressions.
§ 30162. Design; manner of affixing.
§ 30163. Affixed to packages.
§ 30164. Use of machines; transfer of stamps or meters.
§ 30165. Tax payment without stamps or impressions.
§ 30165.1. Master Settlement Agreement compliance.

* Chapter 3.5 was added to Part 13 by Stats. 1961, p. 2315, operative July 16, 1961

30161. Tax payment by use of stamps and impressions. Except for the use or consumption of cigarettes by other than a licensed distributor, and as may be authorized under the provisions of Section 30165, the tax imposed by this part with respect to distributions of cigarettes shall be paid by distributors through the use of stamps or meter impressions. The board shall furnish stamps for sale and provide for the sale of meter register settings for metering machines approved by the board.

History.—Added by Stats. 1961, p. 2315, operative July 16, 1961. Former Section 30161 was renumbered as Section 30151 by Stats. 1961, p. 2315, operative July 16, 1961, which added Chapter 3.5.

Text of section operative through December 31, 2004

30162. Design; manner of affixing. (a) Stamps and meter impressions shall be of the designs, specifications and denominations as may be prescribed by the board. The board shall prescribe by regulation the method and manner in which stamps or meter impressions are to be affixed to packages of cigarettes and may provide for the cancellation of stamps or meter impressions.

(b) This section shall remain in effect until January 1, 2005, and as of that date is repealed.

History.—Added by Stats. 1961, p. 2315, operative July 16, 1961. Stats. 2002, Ch. 881 (SB 1701), in effect January 1, 2003, added subdivision letter designation (a) before former sole paragraph, substituted “the” for “such” after “impressions shall be of”, and added subdivision (b).

Note.—SEC. 6. of Stats. 2004, Ch. 822 (AB 3092), in effect September 27, 2004, states, It is the intent of the Legislature that the State Board of Equalization is authorized to exercise its authority, as set forth in subdivision (a) of Section 30162 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 881 of the Statutes of 2002, and as set forth in subdivision (b) of Section 30162 of the Revenue and Taxation Code, as added by Section 2 of Chapter 881 of the Statutes of 2002, with regard to cigarette stamps and meter impressions in a manner that does not affect commerce within this state.

Text of section operative January 1, 2005

30162. Design; manner of affixing. (a) Stamps and meter impressions shall be of the designs, specifications, and denominations as may be prescribed by the board. Stamps and meter impressions shall be generated by a technology capable of being read by a scanning or similar device and shall be encrypted with, at a minimum, the following information:

(1) The name and address of the distributor affixing the stamp or meter impression.

(2) The date the stamp or meter impression was affixed.

(3) The denominated value of the stamp or meter impression.

(b) The board shall prescribe by regulation the method and manner in which stamps or meter impressions are to be affixed to packages of cigarettes and may provide for the cancellation of stamps or meter impressions.

(c) This section shall become operative on January 1, 2005.

History.—Added by Stats. 2002, Ch. 881 (SB 1701), in effect January 1, 2003.

Note.—SEC. 6. of Stats. 2004, Ch. 822 (AB 3092), in effect September 27, 2004, states, It is the intent of the Legislature that the State Board of Equalization is authorized to exercise its authority, as set forth in subdivision (a) of Section 30162 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 881 of the Statutes of 2002, and as set forth in subdivision (b) of Section 30162 of the Revenue and Taxation Code, as added by Section 2 of Chapter 881 of the Statutes of 2002, with regard to cigarette stamps and meter impressions in a manner that does not affect commerce within this state.

30163. Affixed to packages. (a) Except as otherwise provided in this section, an appropriate stamp shall be affixed to, or an appropriate meter impression shall be made on each package of cigarettes prior to the distribution of the cigarettes.

(b) No stamp or meter impression may be affixed to, or made upon, any package of cigarettes if any one of the following occurs:

(1) The package does not comply with all requirements of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. Sec. 1331 and following) for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States.

(2) The package is labeled “For Export Only,” “U.S. Tax Exempt,” “For Use Outside U.S.,” or similar wording indicating that the manufacturer did not intend that the product be sold in the United States.

(3) The package, or a package containing individually stamped packages, has been altered by adding or deleting the wording, labels, or warnings described in paragraph (1) or (2).

(4) The package was imported into the United States after January 1, 2000, in violation of Section 5754 of Title 26 of the United States Code.

(5) (A) The package bears a cigarette brand name which is a registered U.S. trademark of a participating manufacturer and the package was imported by anyone other than the participating manufacturer of that cigarette brand.

(B) For purposes of this paragraph, “participating manufacturer” has the same meaning as defined in paragraph (1) of subdivision (a) of Section 104557 of the Health and Safety Code and in Section II(jj) of the Master Settlement Agreement described in Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code.

(c) Pursuant to its authority under Section 30148, the board shall revoke the license issued to a distributor that is determined to be in violation of this section.

(d) A violation of subdivision (b) shall constitute unfair competition under Section 17200 of the Business and Professions Code.

History.—Added by Stats. 1961, p. 2315, operative July 16, 1961. Stats. 1998, Ch. 292 (SB 2134), in effect August 13, 1998, substituted “Except as otherwise provided in this section, an” for “An” at the beginning of the section and added “No stamp or . . . of this section.” as the second sentence. Stats. 1999, Ch. 935 (SB 702), in effect October 10, 1999, renumbered first sentence as subdivision (a), renumbered portion of the second sentence up to “. . . any package of cigarettes” as subdivision (b), renumbered the balance of the second sentence as paragraph (1) of subdivision (b), renumbered the third sentence as subdivision (c), added paragraph (2), (3) and (4) to subdivision (b), and added subdivision (d). Stats. 2000, Ch. 18 (SB 1038), in effect May 5, 2000, added paragraph (5) to subdivision (b).

30164. Use of machines; transfer of stamps or meters. A metering machine may be used and a meter may be stored, transferred, transported, repaired, opened, set or used only in accordance with rules and regulations prescribed by the board. Meters, meter register settings, or unaffixed stamps shall not be sold, exchanged or in any manner transferred by a distributor to another person without prior written approval of the board.

History.—Added by Stats. 1961, p. 2315, operative July 16, 1961.

30165. **Tax payment without stamps or impressions.** The board by regulation may provide that the tax imposed by this part with respect to cigarettes shall be paid without the use of stamps or meter impressions in connection with a particular type of transaction.

History.—Added by Stats. 1961, p. 2316, operative July 16, 1961.

7242.2
2005-1

CIGARETTE AND TOBACCO PRODUCTS TAX LAW

30165.1. Master Settlement Agreement compliance. (a) The following definitions shall apply for purposes of this section:

- (1) "Board" means the State Board of Equalization.
- (2) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers, including, but not limited to, "menthol," "lights," "kings," and "100s" and includes any brand name, alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.
- (3) "Cigarette" has the same meaning as in subdivision (d) of Section 104556 of the Health and Safety Code and includes tobacco products defined as a cigarette under that subdivision.
- (4) "Distributor" has the same meaning as in Section 30011.
- (5) "MSA" means the Master Settlement Agreement, as defined in subdivision (e) of Section 104556 of the Health and Safety Code.
- (6) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.
- (7) "Participating manufacturer" has the same meaning as in subsection II(jj) of the MSA.
- (8) "Qualified escrow fund" has the same meaning as in subdivision (f) of Section 104556 of the Health and Safety Code.
- (9) "Tobacco product manufacturer" has the same meaning as in subdivision (i) of Section 104556 of the Health and Safety Code.
- (10) "Units sold" has the same meaning as in subdivision (j) of Section 104556 of the Health and Safety Code.

(b) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form and in the manner prescribed by the Attorney General a certification to the Attorney General no later than the 30th day of April each year that, as of the date of the certification, the tobacco product manufacturer is either a participating manufacturer, or is in full compliance with Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, including all installment payments required by that article and this section, and any regulations promulgated pursuant thereto. Any person who makes a certification pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

(1) A participating manufacturer shall include in its certification a complete list of its brand families. The participating manufacturer shall

update the list 30 days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.

(2) A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families, in accordance with the following requirements:

(A) Separately listing brand families of cigarettes and the number of units sold for each brand family that were sold in the state during the preceding calendar year.

(B) Separately listing all of its brand families that have been sold in the state at any time during the current calendar year.

(C) Indicating by an asterisk any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of the certification.

(D) Identifying by name and address any other manufacturer, including all fabricators or makers of the brand families in the preceding or current calendar year in a form, manner, and detail as required by the Attorney General. The nonparticipating manufacturer shall update the list 30 days prior to any change in a fabricator for any brand family or any addition to or modification of its brand families by executing and delivering a supplemental certification to the Attorney General.

(3) In the case of a nonparticipating manufacturer, the certification shall further certify all of the following:

(A) That the nonparticipating manufacturer is registered to do business in the state, or has appointed a resident agent for service of process and provided notice thereof as required by subdivision (f).

(B) That the nonparticipating manufacturer has done all of the following:

(i) Established and continues to maintain a qualified escrow fund as that term is defined in subdivision (f) of Section 104556 of the Health and Safety Code and implementing regulations.

(ii) Executed a qualified escrow agreement that has been reviewed and approved by the Attorney General and that governs the qualified escrow fund.

(iii) If the nonparticipating manufacturer is not the fabricator or maker of the cigarettes, that the escrow agreement, certification, reports, and any other forms required by Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and implementing regulations are signed by the company that fabricates or makes the cigarettes and in the manner required by the Attorney General.

(C) That the nonparticipating manufacturer is in full compliance with Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, including paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, this section, and any regulations promulgated pursuant thereto.

(D) That the manufacturer has provided all of the following:

(i) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required pursuant to Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and all regulations promulgated thereto.

(ii) The account number of the qualified escrow fund and subaccount number for the State of California.

(iii) The amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and any confirming evidence or verification as may be deemed necessary by the Attorney General.

(iv) The amounts and dates of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and all regulations promulgated thereto.

(4) (A) A tobacco product manufacturer may not include a brand family in its certification unless either of the following is true:

(i) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the MSA for the relevant year, in the volume and shares determined pursuant to the MSA.

(ii) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, including paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, and any regulations promulgated pursuant thereto and this section.

(B) Nothing in this section shall be construed as limiting or otherwise affecting the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the MSA or for purposes of Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and any regulations promulgated pursuant thereto.

(5) A tobacco product manufacturer shall maintain all invoices and documentation of sales and other information relied upon for the certification for a period of five years, unless otherwise required by law to maintain them for a longer period of time.

(c) Not later than June 30, 2004, the Attorney General shall develop and publish on its Internet Web site a directory listing of all tobacco product manufacturers that have provided current, timely, and accurate certifications

conforming to the requirements of subdivision (b) and all brand families that are listed in the certifications, except as specified below.

(1) The Attorney General may not include or retain in the directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with subdivision (b), unless the Attorney General has determined that the violation has been cured to the satisfaction of the Attorney General.

(2) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the Attorney General concludes that either of the following is true:

(A) In the case of a nonparticipating manufacturer, any escrow deposit required pursuant to Section 104557 of the Health and Safety Code for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully deposited into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General.

(B) Any outstanding final judgment, including interest thereon, for violations of Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, this section, and any regulations promulgated pursuant thereto, has not been fully satisfied for the brand family and the manufacturer.

(3) The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this section. The Attorney General shall promptly provide distributors with written notice of each tobacco product manufacturer and brand family that the Attorney General has added to, or excluded or removed from the list.

(4) Every distributor shall provide to the Attorney General and update, as necessary, an electronic mail address for the purpose of receiving any notifications as may be required by this section.

(5) The Attorney General shall provide each tobacco product manufacturer that has provided all certifications and other information required by this section with a written acknowledgment of receipt within seven business days after receiving the certifications and other materials. Each tobacco product manufacturer shall provide to each distributor to whom it sells or ships cigarettes, or any tobacco product defined as a cigarette under this section, a copy of each acknowledgment of receipt provided to the manufacturer by the Attorney General. Upon request, the Attorney General shall provide any distributor with a copy of the most recent written acknowledgment of receipt provided to the tobacco product manufacturer.

(d) (1) The Attorney General may exclude or remove from the list required by subdivision (c) a tobacco product manufacturer or any of its brand families, based on a determination that the manufacturer is not a participating manufacturer and has not made all escrow payments required

by paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, in accordance with that subdivision, or has not complied with this section. Before the exclusion or removal may take effect, the Attorney General shall notify the manufacturer of this determination.

(2) Upon receiving notice from the Attorney General pursuant to paragraph (1), the manufacturer may challenge the Attorney General's determination as erroneous, and may seek relief from the determination, by filing a petition for writ of mandate pursuant to Section 1085 of the Code of Civil Procedure for that purpose in the Superior Court for the County of Sacramento, or as otherwise provided by law. The filing of the petition shall operate to stay the Attorney General's determination, if the manufacturer has paid into escrow the full amount of any deficiency in the escrow payments that the Attorney General has determined the tobacco product manufacturer was required to have made under paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, including any installment payments required under subdivision (h), pending final resolution of the action.

(e) (1) No person shall affix, or cause to be affixed, any tax stamp or meter impression to a package of cigarettes pursuant to subdivision (a) of Section 30163, or pay the tax levied pursuant to Sections 30123 and 30131.2 on a tobacco product defined as a cigarette under this section, unless the brand family of the cigarettes or tobacco product, and the tobacco product manufacturer that makes or sells the cigarettes or tobacco product, are included on the list posted by the Attorney General pursuant to subdivision (c).

(2) No person shall sell, offer, or possess for sale in this state, or import for personal consumption in this state, cigarettes of a tobacco product manufacturer or brand family not included in the directory.

(3) No person shall do either of the following:

(A) Sell or distribute cigarettes that the person knows or should know are intended to be distributed in violation of paragraphs (1) and (2).

(B) Acquire, hold, own, possess, transport, import, or cause to be imported cigarettes that the person knows or should know are intended to be distributed in violation of paragraphs (1) and (2).

(f) (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this section, Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto, may be served in any manner authorized by law. This service shall constitute legal and valid service of process on the nonparticipating manufacturer. The

nonparticipating manufacturer shall provide the name, address, telephone number, and proof of the appointment and availability of the agent to the satisfaction of the Attorney General.

(2) The nonparticipating manufacturer shall provide notice to the Attorney General 30 calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the Attorney General of said termination within five calendar days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose products are sold in this state without appointing or designating an agent as herein required shall be deemed to have appointed the Secretary of State as its agent, as provided in Section 2105 of the Corporations Code, and may be proceeded against in courts of this state by service of process upon the Secretary of State. However, the appointment of the Secretary of State pursuant to this provision as the agent for service of process does not satisfy the condition precedent specified in paragraph (1) to having its brand families listed or retained in the directory.

(g) (1) Not later than 25 days after the end of each calendar quarter, and more frequently if so directed by the board or the Attorney General, each distributor shall submit any information as the board or Attorney General requires to facilitate compliance with this section, including, but not limited to, a list by brand family of the total number of cigarettes or in the case of roll your own, the total ounces for which the distributor affixed stamps during the previous calendar month or otherwise paid the tax due for those cigarettes. The distributor shall maintain, and shall make available to the board and the Attorney General, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the board and the Attorney General for a period of five years.

(2) Notwithstanding Section 30455, the board is authorized to disclose to the Attorney General any information received under this part for purposes of determining compliance with and enforcing the provisions of this section and Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto. The board and Attorney General shall share with each other the information received under this section, and may share that information with other federal, state, or local agencies, only for purposes of enforcement of this section, Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto, or corresponding laws of other states.

(3) At any time, the Attorney General may require from the nonparticipating manufacturer proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto, of the amount of money in the fund being held on behalf of the state and the dates of deposits, and listing the amounts of all withdrawals from the fund and the dates thereof.

(4) In addition to the information required to be submitted pursuant to this section or Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code and any regulations promulgated pursuant thereto, the board or the Attorney General may require a retailer, wholesaler, distributor, or tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this section, or Article 3 (commencing with Section 104555) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code, and any regulations promulgated pursuant thereto.

(h) To promote compliance with this section, the Attorney General may promulgate regulations requiring a tobacco product manufacturer subject to the requirements of paragraph (2) of subdivision (a) of Section 104557 to make the escrow deposits required in quarterly or other specified installments during the year in which the sales covered by the deposits are made. The Attorney General may require production of information sufficient to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

(i) (1) In addition to any other civil or criminal penalty provided by law, upon a finding that a distributor has violated subdivision (e), or paragraph (1) of subdivision (g), the board may take the following actions:

(A) In the case of the first offense, the board may revoke or suspend the license or licenses of the distributor pursuant to the procedures applicable to the revocation of a license set forth in Section 30148.

(B) In the case of a second or any subsequent offense, in addition to the action authorized under subparagraph (A), the board may impose a civil penalty in an amount not to exceed the greater of either of the following:

(i) Five times the retail value of the cigarettes or tobacco products defined as cigarettes under this section.

(ii) Five thousand dollars (\$5,000).

(2) A distributor in any action for a violation of subdivision (e) shall have a defense provided that either of the following is true:

(A) At the time of the violation, the cigarettes or tobacco products claimed to be the subject of the alleged violation belonged to a brand family that was included on the list required by subdivision (c).

(B) At the time of the violation, the distributor possessed a copy of the Attorney General's most recent written acknowledgment of receipt of the certifications and other information required as a condition of including the brand family on the list required by subdivision (c).

(3) The defense described in subparagraph (B) of paragraph (2) is not available to a distributor if, at the time of the violation, the Attorney General had provided the distributor with written notice that the brand family had been excluded or removed from the list required by subdivision (c), or the distributor failed to provide the Attorney General with a current address for the receipt of written notice through electronic mail as required by paragraph (4) of subdivision (c).

(4) A violation of paragraph (3) of subdivision (e) shall constitute a misdemeanor.

(j) If a distributor affixes a stamp or meter impression to a package of cigarettes under subdivision (a) of Section 30163, or pays the tax levied under Sections 30123 and 30131.2 on a tobacco product defined as a cigarette under this section, during the period between the date on which the brand family of the cigarettes or tobacco product was excluded or removed from the list required by subdivision (c) and the date on which the distributor received notice of the exclusion or removal under paragraph (4) of subdivision (c), then both of the following shall apply:

(1) The distributor shall be entitled to a credit for the tax paid by the distributor with respect to the cigarette or tobacco product to which the stamp or meter impression was affixed, or the tax paid during that period. The distributor shall comply with regulations prescribed by the board regarding refunds and credits that are adopted pursuant to Section 30177.5. If the distributor has sold the cigarette or tobacco product to a wholesaler or retailer, and has received payment from the wholesaler or retailer, the distributor shall provide the credit to the wholesaler or retailer.

(2) The brand family may not be included on or restored to the list until the tobacco product manufacturer has reimbursed the distributor for the cost to the distributor of the cigarettes or tobacco product to which the stamp or meter impression was affixed, or the tax paid, during that period.

(k) Any tobacco product manufacturer that falsely represents any of the following to any person shall be guilty of a misdemeanor for each false representation:

(1) Any information required under subdivision (b).

(2) That the tobacco product manufacturer is a participating manufacturer.

(3) That the tobacco product manufacturer or any other person has made any or all escrow payments required by paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, if applicable to the manufacturer.

(4) That it has complied with subdivision (b), or with paragraph (1) of subdivision (g), if applicable to the manufacturer.

(l) A violation of subdivision (e) shall constitute unfair competition under Section 17200 of the Business and Professions Code.

(m) No person shall be issued a distributor's license, pursuant to Section 30140, unless that person has certified in writing that the person will comply fully with this section. Any person who makes a certification pursuant to this subdivision that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

(n) For the year 2003, if the effective date of the act that added this section is later than March 16, 2003, the first report of distributors required by paragraph (1) of subdivision (g) shall be due 30 days after that effective date, the certifications by a tobacco product manufacturer described in subdivision (b) shall be due 45 days after that effective date, and the directory described in subdivision (c) shall be published or made available within 90 days after that effective date.

(o) The Attorney General may adopt rules and regulations to implement this section. The rules and regulations may establish procedures for including in the list described in subdivision (c) tobacco product manufacturers that are not participating manufacturers and were not required to make escrow payments under paragraph (2) of subdivision (a) of Section 104557 of the Health and Safety Code, for sales made during any preceding calendar year, and brand families of those manufacturers. The rules and regulations may also establish procedures for seizure and destruction of cigarettes forfeited to the state pursuant to Section 30436 or Section 30449, including, but not limited to, the state facilities that may be used for the destruction of contraband cigarettes. Nothing in this section shall affect the authority of local law enforcement and local government officials to seize and destroy contraband under existing state or local law. The regulations adopted to effect the purposes of this section are emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that chapter, as provided in subdivision (e) of Section 11346.1 of the Government Code.

(p) In any action brought by the state to enforce this section, the state shall be entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney's fees.

(q) Unless otherwise expressly provided, the remedies or penalties provided by this section are cumulative to each other and to the remedies or penalties available under all other laws of this state.

History.—Added by Stats. 2003, Ch. 890 (AB 71), in effect January 1, 2004.

Article 2. Sale to Distributors

- § 30166. Payment for stamps and settings; discount.
- § 30166.1. Legislative report; evaluation of cost to apply stamps and settings.
- § 30167. Application for credit purchases.
- § 30168. Due date for credit purchases.
- § 30169. Authorization of agent.
- § 30170. Suspension of credit.
- § 30171. Penalty and interest.
- § 30172. Extension of time.

30166. Payment for stamps and settings; discount. Stamps and meter register settings shall be sold at their denominated values less 0.85 percent to licensed distributors. Payment for stamps or meter register settings shall be made at the time of purchase, provided that a licensed distributor, subject to the conditions and provisions of this article, may be permitted to defer payments therefor.

History.—Added by Stats. 1961, p. 2316, operative July 16, 1961. Stats. 1967, p. 2519, operative August 1, 1967, substituted "0.85 percent" for "2 percent."

30166.1. Legislative report; evaluation of cost to apply stamps and settings. No later than July 1, 2005, the board shall submit a report to the Legislature that evaluates the average actual costs, including labor for applying indicia or impressions, bonding, warehousing, and leasing stamping equipment, including case cutters and packers, associated with applying stamps or meter impressions to cigarette packages. This report shall be updated every two years.

History.—Added by Stats. 2003, Ch. 890 (AB 71), in effect January 1, 2004.

30167. Application for credit purchases. A licensed distributor may apply to the board to fix the maximum amount of deferred-payment purchases of stamps and meter register settings which the distributor may have unpaid at any time. Upon receipt of the application and the bond or bonds required pursuant to Section 30142, the board shall fix such amount. The board at any time may designate the sales locations where the distributor may make deferred-payment purchases of stamps and meter register settings and fix the amount of such purchases which the distributor may have unpaid at any one time with respect to purchases made at each of the designated sales locations.

History.—Added by Stats. 1961, p. 2316, operative July 16, 1961. Stats. 1967, p. 2519, operative August 1, 1967, substituted "have unpaid at any time" for "make in any monthly period beginning with the 16th day of a calendar month and ending with the 15th day of the following calendar month" in the first sentence and substituted "have unpaid at any one time with respect to purchases made at each of" for "make within each monthly period at" in the last sentence.

Text of section operative through December 31, 2006

30168. Due date for credit purchases. (a) Amounts owing for stamps and meter register settings purchased on the deferred-payment basis in any calendar month shall be due and payable on a monthly basis, in the

manner elected pursuant to subdivision (b), during the month following the calendar month in which the stamps and meter register settings were purchased. Payment shall be made by a remittance payable to the board.

(b) A distributor shall elect to make the payment required by subdivision (a) on either a monthly or a twice-monthly basis. An election made pursuant to this subdivision shall remain in effect for at least one year from the date the election is made. If the board finds that good cause exists for a distributor's inability to maintain the election for the full year, the board shall authorize the distributor to make a new election, as otherwise authorized by this subdivision, prior to the expiration of the one-year period following the prior election.

(1) If a distributor elects to make the payment required by subdivision (a) on a monthly basis, the distributor shall remit the payment on or before the 25th day of the month following the month in which the stamps and meter register settings were purchased.

(2) If a distributor elects to make the payment required by subdivision (a) on a twice-monthly basis, the distributor shall make two remittances during the month following the month in which the stamps and meter register settings were purchased. The first monthly remittance shall be made on or before the 5th day of the month and shall be equal to either one-half of the total amount of those purchases of stamps and meter register settings that were made during the preceding month or the total amount of those purchases of stamps and meter register settings that were made between the first day and the 15th day of the preceding month, whichever is greater. The second monthly remittance shall be made on or before the 25th day of the month for the remainder of those purchases of stamps and meter register settings that were made in the preceding month.

(c) This section shall remain in effect until January 1, 2007, and as of that date is repealed.

History.—Added by Stats. 1961, p. 2316, operative July 16, 1961. Stats. 1967, p. 2519, operative August 1, 1967, substituted "any calendar month, beginning with August, 1967," for "a monthly period beginning with the 16th day of a calendar month and ending with the 15th day of the following calendar month" and "20th day of the following" for "28th day of the latter" in the first sentence and added the last sentence. Stats. 1968, p. 1100, in effect November 13, 1968, substituted "25th" for "20th". Stats. 2003, Ch. 867 (AB 1666), in effect January 1, 2004, established the former sole paragraph as subdivision (a), deleted ", beginning with August, 1967," after "in any calendar month", substituted "on a monthly basis . . . meter register settings were purchased" for "on or before the 25th day of the following calendar month" after "shall be due and payable" in the first sentence, and deleted the last sentence "Amounts owing for purchases made from July 16, 1967, to and including July 31, 1967, shall be due and payable on or before August 31, 1967" of subdivision (a); and added subdivisions (b) and (c).

Note.—SEC. 9. of Stats. 2003, Ch. 867 (AB 1666), effective January 1, 2004, states, The Legislative Analyst, with assistance of, and based on information provided by, the State Board of Equalization, shall, on or before January 1, 2006, prepare a report to the Legislature of the economic impact of this act. The report shall include an evaluation of the State Board of Equalization's ability to collect cigarette tax revenues, additional revenues, if any, generated by the twice-monthly payment program, and the ability of distributors to access security bonds.

Text of section operative January 1, 2007

30168. Due date for credit purchases. (a) Amounts owing for stamps and meter register settings purchased on the deferred-payment basis in any calendar month shall be due and payable on or before the 25th day of the following calendar month. Payment shall be made by a remittance payable to the board.

(b) This section shall become operative on January 1, 2007.

History.—Added by Stats. 2003, Ch. 867 (AB 1666), in effect January 1, 2004.

Note.— SEC. 9. of Stats. 2003, Ch. 867 (AB 1666), effective January 1, 2004, states, The Legislative Analyst, with assistance of, and based on information provided by, the State Board of Equalization, shall, on or before January 1, 2006, prepare a report to the Legislature of the economic impact of this act. The report shall include an evaluation of the State Board of Equalization's ability to collect cigarette tax revenues, additional revenues, if any, generated by the twice-monthly payment program, and the ability of distributors to access security bonds.

30169. Authorization of agent. A distributor shall authorize in writing those persons who may order purchases of stamps or meter register settings for the account of the distributor at a location where stamps or meter register settings are sold. The authorization shall continue in effect until written notice of revocation of the authority is delivered at the sales location in such manner as may be prescribed by the board.

History.—Added by Stats. 1961, p. 2316, operative July 16, 1961.

30170. Suspension of credit. The board may suspend without prior notice a distributor's privilege to purchase stamps or meter register settings on the deferred-payment basis or may reduce the amount of permissible deferred-payment purchases fixed for the distributor, if the distributor fails to promptly pay for stamps or meter register settings when payment is due, if the bond or bonds of the distributor are canceled, become void, impaired, or unenforceable for any reason, or if in the opinion of the board, collection of any amounts unpaid or due from the distributor under this part are jeopardized.

History.—Added by Stats. 1961, p. 2316, operative July 16, 1961. Stats. 1967, p. 2520, operative August 1, 1967, substituted "deferred-payment purchases" for "monthly purchases."

30171. Penalty and interest. Any distributor who fails to pay any amount owing for the purchase of stamps or meter register settings within the time required, shall pay a penalty of 10 percent of the amount due in addition to the amount plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the amount became due and payable until the date of payment.

History.—Added by Stats. 1961, p. 2316, operative July 16, 1961. Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted "1 percent" for "one-half of 1 percent." Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted "adjusted . . . 19269" for "rate . . . thereof" before "from." Stats. 1984, Ch. 1020, effective January 1, 1985, effective July 1, 1985, substituted "modified . . . thereof" for "adjusted annual rate," substituted "Section 6591.5" for "Section 19269."

30172. Extension of time. The board for good cause may extend for not to exceed five days the time for paying any amount owing for stamps or meter register settings purchased on the deferred-payment basis provided a request for the extension is filed with the board within or prior to the period for which the extension may be granted.

History.—Added by Stats. 1961, p. 2317, operative July 16, 1961.

Article 3. Determinations

- § 30173. Basis for determination; notice.
- § 30174. Determination final.
- § 30175. Petition for redetermination.

30173. Basis for determination; notice. If a distributor fails to make payment for stamps or meter register settings when payment is due, the board

may compute and determine from any available records and information the amount required to be paid, including interest and penalties. One or more determinations may be made of the amount due for one or for more than one purchase. In making a determination the board may offset overpayments with respect to purchases of stamps or meter register settings against underpayments for purchases and interest and penalties on the underpayments. The board shall give the distributor written notice of its determination in the manner provided by Section 30206. Except in the case of fraud, every notice of a determination made under this article shall be given within three years of the due date for payment of the purchase of stamps or a meter register setting.

History.—Added by Stats. 1961, p. 2317, operative July 16, 1961.

30174. Determination final. If the amount specified in the determination made under this article is not paid within 10 days after service of the notice upon the distributor, the determination becomes final unless a petition for redetermination is filed with the board within the 10-day period. The determination is due and payable when it becomes final and the amounts determined, exclusive of interest and penalties, shall bear interest at the rate prescribed by Section 30171.

History.—Added by Stats. 1961, p. 2317, operative July 16, 1961.

30175. Petition for redetermination. The distributor against whom a determination is made under this article may petition for the redetermination thereof pursuant to Article 5 (commencing with Section 30241) of Chapter 4. He or she shall, however, file the petition for redetermination within the time prescribed by Section 30174 and shall, at the time of filing the petition, deposit with the board such security as it may deem necessary to insure compliance with this part. The security may be sold in the same manner as prescribed by Section 30243.

History.—Added by Stats. 1961, p. 2317, operative July 16, 1961. Stats. 1982, Ch. 454, in effect January 1, 1983, added “(commencing with Section 30241)” after “Article 5” and deleted “of this part” after “Chapter 4” in the first sentence, and added “or she” after “He” and placed commas around the phrase “at the time of filing the petition” in the second sentence.

Article 4. Refunds

- § 30176. Unused stamps and meter settings.
- § 30176.1. Refunds; exported tax-paid tobacco products.
- § 30176.2. Refunds and credits; returned tobacco products.
- § 30177. Unusable or destroyed cigarettes.
- § 30177.5. Credit; stamps affixed or tax paid in violation of Attorney General certification.
- § 30178. Claim; limitation period.
- § 30178.1. Application for refund; limitation period.
- § 30178.2. Credit in lieu of refund.
- § 30179. Interest.
- § 30179.1. Interest; limitations.

30176. Unused stamps and meter settings. The board shall, pursuant to regulations prescribed by it, refund or credit to a distributor the denominated values, less the discount given on their purchase of any unused stamps or meter register settings.

History.—Added by Stats. 1961, p. 2317, operative July 16, 1961.

30176.1. Refunds; exported tax-paid tobacco products. (a) The board shall, pursuant to regulations prescribed by it, refund or credit to a distributor the tax imposed on tobacco products pursuant to Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131) of Chapter 2 which is paid on the distribution of tobacco products which are shipped to a point outside the state for subsequent use or sale out of the state.

(b) This section does not apply to tobacco products delivered to the consumer in this state and subsequently taken outside the state.

History.—Added by Stats. 1989, Ch. 634, in effect September 21, 1989. Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, added “and Article 3 (commencing with Section 30131)” after “pursuant to Article 2 (commencing with Section 30121)” in subdivision (a).

30176.2. Refunds and credits; returned tobacco products. The board shall, pursuant to regulations prescribed by it, refund or credit to a distributor the tax imposed on tobacco products pursuant to Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131) of Chapter 2 that is paid on the distribution of tobacco products that were returned by a customer, when the distributor refunds the entire amount the customer paid for the tobacco products either in cash or credit. For purposes of this section, refund or credit of the entire amount shall be deemed to be given when the purchase price, less rehandling and restocking costs, is refunded or credited to the customer. The amount withheld for rehandling and restocking costs may be a percentage of the sales price determined by the average cost of rehandling and restocking returned merchandise during the previous accounting cycle.

History.—Added by Stats. 2001, Ch. 426 (SB 312), in effect October 2, 2001.

Note.—SEC. 7 of Stats. 2001, Ch. 426 (SB 312), effective October 2, 2001, states: The Legislature finds and declares that this act furthers and is consistent with the purposes expressed in Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as contained within the Tobacco Tax and Health Protection Act of 1988 (Proposition 99 of the November 8, 1988, general election), and Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as contained in the California Families and Children Act of 1998 (Proposition 10 of the November 3, 1998, general election).

30177. Unusable or destroyed cigarettes. The board shall, pursuant to regulations prescribed by it, refund or credit to a distributor the denominated values, less the discount given on their purchase, of stamps or meter impressions affixed to packages of cigarettes which have prior to distribution become unfit for use, unsalable or have been destroyed, or which after distribution have become unfit for use or unsalable and have been returned for credit or have been replaced, and the board has proof of that return or destruction.

History.—Added by Stats. 1961, p. 2318, operative July 16, 1961. Stats. 1998, Ch. 815 (AB 2075), in effect September 25, 1998, added “, and the tax . . . of tobacco products,” after “packages of cigarettes” and substituted “that return or destruction” for “the cigarettes not being used for smoking in this State” after “has proof of”. Stats. 2001, Ch. 426 (SB 312), in effect October 2, 2001, deleted “, and the tax imposed on tobacco products that has been paid on the distribution of tobacco products,” after “stamps or meter impressions affixed to packages of cigarettes”.

Note.—SEC. 7 of Stats. 2001, Ch. 426 (SB 312), effective October 2, 2001, states: The Legislature finds and declares that this act furthers and is consistent with the purposes expressed in Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as contained within the Tobacco Tax and Health

Protection Act of 1988 (Proposition 99 of the November 8, 1988, general election), and Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as contained in the California Families and Children Act of 1998 (Proposition 10 of the November 3, 1998, general election).

30177.5. Credit; stamps affixed or tax paid in violation of Attorney General certification. (a) The board shall credit to a distributor that is entitled to the credit authorized by paragraph (1) of subdivision (j) of Section 30165.1, the denominated value, less any discounts authorized by this part, of the stamps or meter impressions purchased and affixed to those packages of cigarettes that are subject to the provisions of subdivision (j) of Section 30165.1.

(b) The board shall credit to a distributor that is entitled to a credit authorized by paragraph (1) of subdivision (j) of Section 30165.1, the amount of taxes paid by that distributor, pursuant to Article 2 (commencing with Section 30121) and Article 3 (commencing with Section 30131), with respect to the tobacco products that are subject to the provisions of subdivision (j) of Section 30165.1.

History.—Added by Stats. 2003, Ch. 890 (AB 71), in effect January 1, 2004.

30178. Claim; limitation period. No refund or credit for amounts overpaid for the purchase of stamps or meter register settings shall be allowed or approved after three years from the due date for payment of the purchase for which the overpayment was made, or with respect to a determination made pursuant to this chapter, after six months from the date the determination becomes final, or after six months from the date of overpayment, whichever period expires the later, unless a claim therefor is filed with the board within such period.

History.—Added by Stats. 1961, p. 2318, operative July 16, 1961.

30178.1. Application for refund; limitation period. Any applications for a refund under Section 30176.1 based upon the exportation of tax-paid tobacco products from this state shall be filed with the board within three months after the close of the calendar month in which the tobacco products are exported.

History.—Added by Stats. 1989, Ch. 634, in effect September 21, 1989.

30178.2. Credit in lieu of refund. In lieu of the refund of the tax on tobacco products pursuant to Section 30176.1 or Section 30176.2, a distributor eligible for that refund may elect to claim a credit against taxes imposed pursuant to this part equal to the amount which would have been refunded if a claim had been made pursuant to Section 30176.1 or Section 30176.2.

History.—Added by Stats. 1989, Ch. 634, in effect September 21, 1989. Stats. 2001, Ch. 426 (SB 312), in effect October 2, 2001, added twice "or Section 30176.2" after "pursuant to Section 30176.1".

Note.—SEC. 7 of Stats. 2001, Ch. 426 (SB 312), effective October 2, 2001, states: The Legislature finds and declares that this act furthers and is consistent with the purposes expressed in Article 2 (commencing with Section 30121) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as contained within the Tobacco Tax and Health

Protection Act of 1988 (Proposition 99 of the November 8, 1988, general election), and Article 3 (commencing with Section 30131) of Chapter 2 of Part 13 of Division 2 of the Revenue and Taxation Code, as contained in the California Families and Children Act of 1998 (Proposition 10 of the November 3, 1998, general election).

30179. Interest. Interest shall be computed, allowed, and paid upon any overpayment for the purchase of stamps or meter register settings at the modified adjusted rate per month established pursuant to Section 6591.5, from the 26th day of the calendar month following the period during which the overpayment was made. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the 25th day of the calendar month following the date upon which the claimant, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

History.—Added by Stats. 1961, p. 2318, operative July 16, 1961. Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “1 percent” for “one-half of 1 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . month” before “from” in the first sentence. Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, substituted “modified . . . month” for “adjusted annual rate,” substituted “Section 6591.5” for “Section 19269.” Stats. 1992, Ch. 1336, in effect January 1, 1993, substituted “from the 26th day . . . paid as follows:” for “from the due date for payment of the purchase for which the overpayment was made, but no refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited. The interest shall be paid:” after “Section 6591.5” in the first paragraph; and substituted “25th” for “15th” in subdivision (a). Stats. 1996, Ch. 320, in effect January 1, 1997, deleted “or the date upon which the claim is certified to the State Board of Control, whichever date is the earlier” after “may be filed” in subdivision (a). Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, added “, if he or she has not already filed a claim,” after “which the claimant” and added “or the date . . . date is earlier” after “may be filed” in subdivision (a).

30179.1. Interest; limitations. No interest shall be allowed on an overpayment of the tax on exported tobacco products which is refunded pursuant to Section 30176.1 or credited against taxes pursuant to Section 30178.2 within 90 days of the claim for the credit or refund.

History.—Added by Stats. 1989, Ch. 634, in effect September 21, 1989.

Article 5. Other Provisions Applicable

§ 30180. Other provisions applicable.

30180. Other provisions applicable. Articles 2 (commencing with Section 30201), 3 (commencing with Section 30221), 4 (commencing with Section 30241), and 6 (commencing with Section 30281) of Chapter 4 and Sections 30185, 30362, and 30366 do not apply to amounts due or paid with respect to purchases made of stamps or meter register settings. The remedies of the state provided in Chapter 5 (commencing with Section 30301) and the provisions of Chapter 6 (commencing with Section 30361), except for Sections 30362 and 30366, apply to amounts due or paid with respect to purchases made of stamps or meter register settings.

History.—Added by Stats. 1961, p. 2318, operative July 16, 1961. Stats. 1982, Ch. 454, in effect January 1, 1983, rephrased the entire section.

CHAPTER 4. DETERMINATIONS

- Article 1. Reports and Payments. §§ 30181-30188.
- 1.1. Payment by Electronic Funds Transfer. §§30190-30193.
 2. Deficiency Determinations. §§ 30201-30208.
 - 2.5. Payment by Unlicensed Persons. §§30210-30216.
 3. Determinations If No Report or Return Made. §§ 30221-30225.
 4. Jeopardy Determinations. §§ 30241-30244.
 5. Redeterminations. §§ 30261-30266.
 6. Interest and Penalties. §§ 30281-30284.

Article 1. Reports and Payments

- § 30181. Due date.
- § 30182. Report by licensed distributor.
- § 30183. Report by registered distributor.
- § 30184. Remittance of tax.
- § 30185. Extension of time.
- § 30186. Report of sales on common carrier.
- § 30187. Report of consumer.
- § 30188. Report by wholesaler.

Text of section operative through December 31, 2006

30181. **Due date.** (a) When any tax imposed upon cigarettes under Article 1 (commencing with Section 30101) or Article 2 (commencing with Section 30121), and Article 3 (commencing with Section 30131) of Chapter 2 is not paid through the use of stamps or meter impressions, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a distribution of cigarettes occurs, or in the case of a sale of cigarettes on the facilities of a common carrier for which the tax is imposed pursuant to Section 30104, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a sale of cigarettes on the facilities of the carrier occurs.

(b) Each distributor of tobacco products shall file a return in the form as prescribed by the board, that may include, but not be limited to, electronic media, with respect to distributions of tobacco products and their wholesale cost during the preceding month, and any other information as the board may require to carry out this part. The return shall be filed with the board, in the manner elected by the distributor pursuant to subdivision (c), together with a remittance payable to the board, of the amount of tax, if any, due under Article 2 (commencing with Section 30121) or Article 3 (commencing with Section 30131) of Chapter 2 for that period. To facilitate the administration of this part, the board may require the filing of the returns for longer than monthly periods. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(c) A distributor shall elect to file the return and to make the payment required by subdivision (b) on either a monthly or a twice-monthly basis. An election made pursuant to this subdivision shall remain in effect for at least one year from the date the election is made. If the board finds that good cause exists for a distributor's inability to maintain the election for the full year, the

board shall authorize the distributor to make a new election, as otherwise authorized by this subdivision, prior to the expiration of the one-year period following the prior election.

(1) If a distributor elects a monthly basis, the distributor shall file a return and remit the payment on or before the 25th day of the month following the month in which the tobacco products were distributed.

(2) If a distributor elects a twice-monthly basis, the distributor shall file two returns and make two remittances during the month following the month in which the tobacco products were distributed. The first monthly return shall be filed and the first remittance shall be made on or before the 5th day of the month for those distributions that occurred between the first day and the 15th day of the preceding month. The second monthly return shall be filed and the second remittance made on or before the 25th day of the month for those distributions that occurred between the 16th day and last day of the preceding month.

(d) This section shall remain in effect until January 1, 2007, and as of that date is repealed.

History.—Stats. 1961, p. 2318, operative July 16, 1961, added the language beginning with “or in the case of”. Stats. 1967, p. 2520, operative August 1, 1967, substituted “any” for “the” as the second word in the section and substituted “20th” for “15th” in two places. Stats. 1968, p. 1101, in effect November 13, 1968, substituted “25th” for “20th” in two places. Stats. 1982, Ch. 454, in effect January 1, 1983, added “(commencing with Section 30101)” after “Article 1” and deleted “of this part” after “Chapter 2.” Stats. 1989, Ch. 634, in effect September 21, 1989, added “(a)” before first paragraph, added “upon cigarettes” before “Article 1” and added “or Article 2 . . . 30121)” before “of Chapter 2”. Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, added “or Article 3 (commencing with Section 30131)” after “Article 2 (commencing with Section 30121)” in the first sentence of subdivision (a) and second sentence of subdivision (b). Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, substituted, “in the form . . . electronic media” for “in the form as prescribed by the board” in, and added the fourth sentence to, subdivision (b). Stats. 2003, Ch. 867 (AB 1666), in effect January 1, 2004, substituted “that” for “which” after “prescribed by the board,” substituted “with respect to distributions . . . to carry out this part” for “for each calendar month” after “electronic media” in the first sentence, substituted “in the manner elected by the distributor pursuant to subdivision (c),” for “on or before the 25th day of the calendar month following the close of the monthly period for which it relates” after “filed with the board” in the second sentence of subdivision (b); added subdivisions (c) and (d).

Note.—SEC. 9. of Stats. 2003. Ch. 867 (AB 1666), effective January 1, 2004, states, The Legislative Analyst, with assistance of, and based on information provided by, the State Board of Equalization, shall, on or before January 1, 2006, prepare a report to the Legislature of the economic impact of this act. The report shall include an evaluation of the State Board of Equalization’s ability to collect cigarette tax revenues, additional revenues, if any, generated by the twice-monthly payment program, and the ability of distributors to access security bonds.

Text of section operative January 1, 2007

30181. (a) When any tax imposed upon cigarettes under Article 1 (commencing with Section 30101), Article 2 (commencing with Section 30121), and Article 3 (commencing with Section 30131) of Chapter 2 is not paid through the use of stamps or meter impressions, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a distribution of cigarettes occurs, or in the case of a sale of cigarettes on the facilities of a common carrier for which the tax is imposed pursuant to Section 30104, the tax shall be due and payable monthly on or before the 25th day of the month following the calendar month in which a sale of cigarettes on the facilities of the carrier occurs.

(b) Each distributor of tobacco products shall file a return in the form, as prescribed by the board, which may include, but not be limited to, electronic media respecting the distributions of tobacco products and their wholesale

cost during the preceding month, and any other information as the board may require to carry out this part. The return shall be filed with the board on or before the 25th day of the calendar month following the close of the monthly period for which it relates, together with a remittance payable to the board, of the amount of tax, if any, due under Article 2 (commencing with Section 30121) or Article 3 (commencing with Section 30131) of Chapter 2 for that period.

(c) To facilitate the administration of this part, the board may require the filing of the returns for longer than monthly periods.

(d) Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(e) This section shall become operative on January 1, 2007.

History.—Added by Stats. 2003, Ch. 867 (AB 1666), in effect January 1, 2004.

Note.—SEC. 9. of Stats. 2003, Ch. 867 (AB 1666), effective January 1, 2004, states, The Legislative Analyst, with assistance of, and based on information provided by, the State Board of Equalization, shall, on or before January 1, 2006, prepare a report to the Legislature of the economic impact of this act. The report shall include an evaluation of the State Board of Equalization's ability to collect cigarette tax revenues, additional revenues, if any, generated by the twice-monthly payment program, and the ability of distributors to access security bonds.

Text of section operative through December 31, 2006

30182. Report by licensed distributor. (a) Except as provided in subdivision (b), every distributor shall file, on or before the 25th day of each month, a report in the form as prescribed by the board, that may include, but not be limited to, electronic media with respect to distributions of cigarettes and purchases of stamps and meter register units during the preceding month and any other information as the board may require to carry out this part.

(b) Every distributor that elects, pursuant to Section 30168, to make deferred payments on a twice-monthly basis shall file a report in the form as prescribed by the board, that may include, but not be limited to, electronic media, with respect to distributions of cigarettes and purchases of stamps and meter register units during the month following the month in which the distribution occurred and the stamps and meter register settings were purchased, and any other information as the board may require to carry out this part.

The monthly report shall be filed on or before the 5th day of the month with respect to those distributions of cigarettes and purchases of stamps and meter register settings that were made during the preceding month.

(c) Reports shall be authenticated in a form, or pursuant to, methods as may be prescribed by the board.

(d) This section shall remain in effect until January 1, 2007, and as of that date is repealed.

History.—Stats. 1967, p. 2520, operative August 1, 1967, substituted "20th" for "fifteenth." Stats. 1968, p. 1101, in effect November 13, 1968, substituted "25th" for "20th". Stats. 1989, Chapter 634, in effect September 21, 1989, added "(a)" before first paragraph, deleted "the purposes of" before "this part." in subdivision (a), and added subdivision (b). Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, deleted "on forms prescribed by the board" after "every distributor shall file" in, added "in the form . . . electronic media" after "a report" to, substituted "any" for "such" after "preceding month, and" in, and added the second sentence to, subdivision (a); deleted ", on forms prescribed by the board," after "shall file" in, added "in the form . . . electronic media" after "a return" to, substituted "any" for "such" after "preceding month, and", and added the second sentence to, subdivision (b). Stats. 2003, Ch. 890 (AB 71), in effect January 1, 2004, substituted "Except as provided in subdivision (b)," for "On" before "every distributor shall file", added ", on" after "distributor shall file", substituted "that" for "which" after "by the board," and substituted "with respect to"

for "respecting his" after "electronic media" in the first sentence, and deleted the former last sentence "Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board." in subdivision (a); substituted "Every distributor that elects . . . shall file a report" for "On or before the 25th day of each month, each distributor shall file a return" before "in the form as prescribed by the board", substituted "that" for "which" after "by the board," substituted "with respect to" for "respecting his or her" after "electronic media," substituted "cigarettes and purchases of stamps . . . meter register settings were purchased," for "tobacco products and their wholesale cost during the preceding month," after "distributions of" in the first sentence, deleted former last sentence "Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board." and added last sentence to subdivision (b); and added subdivisions (c) and (d).

Note.—SEC. 9. of Stats. 2003, Ch. 867 (AB 1666), effective January 1, 2004, states, The Legislative Analyst, with assistance of, and based on information provided by, the State Board of Equalization, shall, on or before January 1, 2006, prepare a report to the Legislature of the economic impact of this act. The report shall include an evaluation of the State Board of Equalization's ability to collect cigarette tax revenues, additional revenues, if any, generated by the twice-monthly payment program, and the ability of distributors to access security bonds.

Text of section operative January 1, 2007

30182. Report by licensed distributor. (a) Every distributor shall, on or before the 25th day of each month, file a report in the form as prescribed by the board, which may include, but not be limited to, electronic media with respect to distributions of cigarettes and purchases of stamps and meter register units during the preceding month and any other information as the board may require to carry out this part.

(b) Every distributor shall, on or before the 25th day of each month, file a return, in the form as prescribed by the board, which may include, but not be limited to, electronic media, with respect to distributions of tobacco products and their wholesale cost during the preceding month, and any other information as the board may require to carry out this part.

(c) The reports and returns required by this section shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(d) This section shall become operative on January 1, 2007.

History.—Added by Stats. 2003, Ch. 867 (AB 1666), in effect January 1, 2004.

Note.—SEC. 9. of Stats. 2003, Ch. 867 (AB 1666), effective January 1, 2004, states, The Legislative Analyst, with assistance of, and based on information provided by, the State Board of Equalization, shall, on or before January 1, 2006, prepare a report to the Legislature of the economic impact of this act. The report shall include an evaluation of the State Board of Equalization's ability to collect cigarette tax revenues, additional revenues, if any, generated by the twice-monthly payment program, and the ability of distributors to access security bonds.

30183. Report by registered distributor. (a) On or before the 25th day of each month every distributor required under Section 30108 to collect any tax during the preceding month shall file a report with the board in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the number of cigarettes with respect to which he or she was required to collect the tax and any other information as the board may require to carry out the purposes of this part. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) On or before the 25th day of each month, each distributor required to collect any tax during the preceding month pursuant to Section 30108 shall file a return, in the form as prescribed by the board, which may include, but not be limited to, electronic media which shows the wholesale cost of tobacco products with respect to which he or she was required to collect the

tax and any other information as the board may require to carry out this part. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

History.—Stats. 1967, p. 2520, operative August 1, 1967, substituted “20th” for “fifteenth.” Stats. 1968, p. 1101, in effect November 13, 1968, substituted “25th” for “20th”. Stats. 1989, Ch. 634, in effect September 21, 1989, added “(a)” before first paragraph, added “or she” in subdivision (a), and added subdivision (b). Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, substituted “in the form . . . electronic media” for “on forms prescribed by the board” after “report with the board” in, substituted “any” for “such” after “to collect the tax and” in, and added the second sentence to, subdivision (a); substituted “in the form . . . electronic media” for “on forms prescribed by the board,” after “shall file a return,” in, substituted “any” for “such” after “collect the tax and” in, and added the second sentence to, subdivision (b).

30184. Remittance of tax. The distributor shall submit with each report or return a remittance payable to the board for the amount of tax due.

History.—Stats. 1989, Ch. 634, in effect September 21, 1989, added “or return” after “report”.

30185. Extension of time. Except as otherwise provided in Section 30172, the board for good cause may extend for not to exceed one month the time for making any report or return or paying any amount of tax required under this part. The extension may be granted at any time provided a request therefor is filed with the board within or prior to the period for which the extension may be granted.

Any person to whom an extension is granted pursuant to this section shall pay, in addition to the amount of tax, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5 from the date on which the amount of tax would have been due without the extension to the date of payment.

History.—Stats. 1963, p. 1440, in effect September 20, 1963, added the reference to § 30172 and substituted “one month” for “30 days.” Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “1 percent” for “one-half of 1 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereof” before “from” in the second paragraph. Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, substituted “modified . . . thereof” for “adjusted annual rate,” substituted “Section 6591.5” for “Section 19269.” Stats. 1989, Ch. 634, in effect September 21, 1989, added “or return” after “report” in first paragraph.

30186. Report of sales on common carrier. On or before the 25th day of each month, the common carriers and authorized persons specified in Section 30104 shall file with the board a report of the sales of cigarettes or tobacco products made by them on the facilities of the carriers in California in the preceding calendar month in that detail as the board may prescribe and in the form as prescribed by the board, which may include, but not be limited to, electronic media, submitting with the report the amount of the tax due under Section 30104. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

History.—Stats. 1967, p. 2520, operative August 1, 1967, substituted “20th” for “fifteenth.” Stats. 1968, p. 1101, in effect November 13, 1968, substituted “25th” for “20th”. Stats. 1989, Ch. 634, in effect September 21, 1989, added “or tobacco products” after “cigarettes”. Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, substituted “that” for “such” after “calendar month in”, deleted “and form” after “detail”, added “and in the form . . . electronic media,” after “may prescribe” and added the last sentence.

30187. Report of consumer. Every consumer or user subject to the tax resulting from a distribution of cigarettes or tobacco products within the meaning of subdivision (b) of Section 30008 from whom the tax has not been collected under Section 30108 shall, on or before the 25th day of the month following receipt of cigarettes or tobacco products, file with the board a report of the amount of cigarettes received by him or her in the preceding

calendar month in that detail as the board may prescribe and in the form as prescribed by the board, which may include, but not be limited to, electronic media, submitting with the report the amount of tax due. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

History.—Stats. 1961, p. 2500, operative July 1, 1961, changed the cross-reference to Section 30008 from subdivision (d) to subdivision (b). Stats. 1967, p. 2521, operative August 1, 1967, substituted “20th” for “15th.” Stats. 1968, p. 1101, in effect November 13, 1968, substituted “25th” for “20th”. Stats. 1989, Ch. 634, in effect September 21, 1989, added “or tobacco products” after “cigarettes” and added “or her” after “by him”. Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, added commas after “Section 30108 shall” and “tobacco products”, substituted “that” for “such” after “calendar month in”, deleted “and form” after “detail”, added “and in the form . . . electronic media,” after “may prescribe” and added the last sentence.

30188. Report by wholesaler. On or before the 25th day of each month, every wholesaler shall file a report in the form as prescribed by the board, which may include, but not be limited to, electronic media respecting his or her inventory, purchases, and sales of cigarettes or tobacco products during the preceding month and any other information as the board may require to carry out the purposes of this part. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

History.—Added by Stats. 1968, p. 2250, in effect November 13, 1968. Stats. 1999, Ch. 941 (SB 1231), in effect January 1, 2000, added “or tobacco products” after “sales of cigarettes.” Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, deleted “on forms prescribed by the board” after “wholesaler shall file”, added “in the form . . . electronic media” after “a report”, added “or her” after “respecting his”, substituted “any” for “such” after “preceding month”, and added the last sentence.

Article 1.1. Payment by Electronic Funds Transfer *

- § 30190. Electronic funds transfer payments.
- § 30191. Relief of penalty.
- § 30192. Definitions.
- § 30193. Electronic filing.

30190. Electronic funds transfer payments. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 30181). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state’s demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state’s demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

* Article 1.1 was added by Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes with respect to the period for which the return is required.

(e) Any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(f) Any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 3 (commencing with Section 30173) or Article 2 (commencing with Section 30201) or Article 3 (commencing with Section 30221), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated tax liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 30281.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

30191. Relief of penalty. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 30190. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

30192. Definitions. (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct,

or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) “Automated clearinghouse” means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) “Automated clearinghouse debit” means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person’s bank account and crediting the state’s bank account for the amount of tax. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) “Automated clearinghouse credit” means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state’s bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) “Fedwire transfer” means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state’s bank account. Electronic funds transfers pursuant to Section 30190 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

30193. Electronic filing. (a) Any return, report, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

Article 2. Deficiency Determinations

- § 30201. Basis of deficiency determination.
- § 30202. Interest.
- § 30203. Offset.
- § 30204. Penalty.
- § 30205. Fraud penalty.
- § 30206. Notice of determination.
- § 30207. Statute of limitation.
- § 30207.1. Limitation; deficiency determination; decedent.
- § 30208. Waiver.

30201. Basis of deficiency determination. If the board is dissatisfied with the report or return filed by any person, it may compute and determine the amount to be paid upon the basis of any information available to it. One or more deficiency determinations may be made of the amount of tax due for one or for more than one month.

History.—Stats. 1989, Ch. 634, in effect September 21, 1989, added “or return” after “report”.

30202. Interest. The amount of the determination, exclusive of penalties, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the amount of the tax, or any portion thereof, should have been reported until the date of payment.

History.—Stats. 1967, p. 2521, operative August 1, 1967, substituted “date” for “fifteenth day after the close of the month for which.” Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “1 percent” for “one-half of 1 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereof” before “from.” Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, substituted “Section 6591.5” for “Section 19269.”

30203. Offset. In making a determination the board may offset overpayments for a month or months against underpayments for another month or months and against the interest and penalties on the underpayments.

30204. Penalty. If any part of the deficiency for which a deficiency determination is made is due to negligence or intentional disregard of this part or the rules and regulations adopted under this part, a penalty of 10 percent of the amount of the determination shall be added thereto.

30205. Fraud penalty. If any part of the deficiency for which a deficiency determination is made is due to fraud or an intent to evade this part or the rules and regulations adopted under this part, a penalty of 25 percent of the amount of the determination shall be added thereto.

30206. Notice of determination. The board shall give the person written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the person at his address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of deposit of the notice in the United States Post Office, or a mailbox, sub-post office, substation or mail chute or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing a notice may be served personally by delivering to the person to be served and service shall be

deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

History.—Stats. 1974, Ch. 610, effective January 1, 1975, revised and enlarged the section and deleted the reference to Section 1013 of the C.C.P.

30207. Statute of limitation. Except in the case of fraud, intent to evade the tax, or failure to make a report or return, every notice of a deficiency determination shall be given within three years after the 25th day of the month following the month for which the amount should have been paid or the report or return was due, or within three years after the report or return was filed, whichever period expires later. In the case of failure to make a report or return, the notice of determination shall be mailed within eight years after the date the report or return was due.

History.—Stats. 1968, p. 1102, in effect November 13, 1968, substituted “25th day . . . for which” for “date when”. Stats. 1993, Ch. 1113, in effect January 1, 1994, added “or return” following “report”; and substituted “paid or the report . . . return was due” for “reported” at the end of the section.

30207.1. Limitations; deficiency determination; decedent. In the case of a deficiency arising under this part during the lifetime of a decedent, a notice of deficiency determination shall be mailed within four months after written request therefor, in the form required by the board, by the fiduciary of the estate or trust or by any other person liable for the tax or any portion thereof.

History.—Added by Stats. 1968, p. 2449, in effect November 13, 1968.

30208. Waiver. If before the expiration of the time prescribed in Section 30207 for the mailing of a notice of deficiency determination the taxpayer has consented in writing to the mailing of the notice after such time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

History.—Added by Stats. 1965, p. 4441, in effect September 17, 1965.

Article 2.5. Payment by Unlicensed Persons *

- § 30210. Immediate liability for tax.
- § 30211. Penalty.
- § 30212. Seizure and sale of property.
- § 30213. Copy of determination.
- § 30214. Cumulative remedies.
- § 30215. Applicable penal provisions.
- § 30216. Repeal date.

30210. Immediate liability for tax. If any person becomes a cigarette or tobacco products distributor without first securing a license, the tax, and applicable penalties and interest, if any, become immediately due and payable on account of all cigarettes or tobacco products distributed. All cigarettes or tobacco products manufactured in this state or transported to this state, and no longer in the possession of the unlicensed distributor, are considered to have been distributed.

* Article 2.5 was added by Stats. 2003, Ch. 890 (AB 71), in effect January 1, 2004.

30211. Penalty. The board shall forthwith ascertain as best it may the amount of the cigarettes or tobacco products distributed and shall determine immediately the tax on that amount, adding to the tax a penalty of 25 percent of the amount of tax or five hundred dollars (\$500), whichever is greater, and shall give the unlicensed person notice of that determination per Section 30244 of the Cigarette and Tobacco Products Tax Law. However, where the board determines that the failure to secure a license was due to reasonable cause, the penalty may be waived. Sections 30242 and 30243 shall be applicable with respect to the finality of the determination and the right of the unlicensed person to petition for a redetermination.

Any person seeking to be relieved of the penalty shall file with the board a signed statement setting forth the facts upon which he or she bases the claim for relief. Any person who signs a statement pursuant to this section that asserts the truth of any material matter that he or she knows to be false is guilty of a misdemeanor punishable by imprisonment of up to one year in the county jail, or a fine of not more than one thousand dollars (\$1,000), or both the imprisonment and the fine.

History.—Stats. 2004, Ch. 82 (AB 2491), in effect June 30, 2004, substituted “give the unlicensed person notice of that” for “issue a jeopardy” after “whichever is greater, and shall” and deleted “to the unlicensed person pursuant to Section 30241 and give the unlicensed person notice” after “of that determination” in the first sentence of the first paragraph.

30212. Seizure and sale of property. The board shall forthwith collect the tax, penalty, and interest due from the unlicensed person by seizure and sale of property in the manner prescribed for the collection of a delinquent monthly tax.

30213. Copy of determination. In the suit, a copy of the jeopardy determination certified by the board shall be prima facie evidence that the unlicensed person is indebted to the state in the amount of the tax, penalties, and interest computed as prescribed by Section 30223.

30214. Cumulative remedies. The foregoing remedies of the state are cumulative.

30215. Applicable penal provisions. No action taken pursuant to this article relieves the unlicensed person in any way from the penal provisions of this part.

30216. Repeal date. This article shall remain in effect until January 1, 2010, and as of that date shall be repealed.

Article 3. Determinations If No Report or Return Made

- § 30221. Basis of determination; penalty.
- § 30222. Offset.
- § 30223. Interest.
- § 30224. Fraud penalty.
- § 30225. Notice of determination.

30221. Basis of determination; penalty. If any person fails to make a report or return, the board shall make an estimate of the number of cigarettes or the wholesale cost of tobacco products distributed by him or her. The estimate shall be made for the month or months in respect to which the

person failed to make a report or return and shall be based upon any information available to the board. Upon the basis of this estimate the board shall compute and determine the amount required to be paid to the state, adding to the sum thus fixed a penalty equal to 10 percent thereof. One or more determinations may be made for one or for more than one month.

History.—Stats. 1967, p. 2521, operative August 1, 1967, deleted “, sold or received” following “distributed” in the first sentence. Stats. 1989, Ch. 634, in effect September 21, 1989, added “or return” after “report” in the first and second sentences, added “or the . . . products” before “distributed” and added “or her” after “him” in the first sentence.

30222. Offset. In making a determination the board may offset overpayments for a month or months against underpayments for another month or months and against interest and penalties on the underpayments.

30223. Interest. The amount of the determination, exclusive of penalties, shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5 from the date the amount, or any portion thereof, should have been reported until the date of payment.

History.—Stats. 1967, p. 2521, operative August 1, 1967, substituted “date” for “fifteenth day after the close of the month for which.” Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “1 percent” for “one-half of 1 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . thereof” before “from.” Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, substituted “modified . . . thereof” for “adjusted annual rate” before “established,” substituted “Section 6591.5” for “Section 19269.”

30224. Fraud penalty. If the failure of a person to file a report is due to fraud or an intent to evade the tax, a penalty of 25 percent of the amount required to be paid by the person, exclusive of penalties, shall be added thereto in addition to the 10 percent penalty provided in Section 30221.

30225. Notice of determination. Promptly after making its determination the board shall give to the person written notice of its estimate and determination, and of the penalty, the notice to be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

Article 4. Jeopardy Determinations

- § 30241. Basis of determination.
- § 30242. Finality date.
- § 30243. Petition for redetermination, security.
- § 30243.5. Administrative hearing.
- § 30244. Service of notice.

30241. Basis of determination. If the board believes that the collection of any amount of tax required to be paid by any person under this part will be jeopardized by delay, it shall thereupon make a determination of the amount of tax, noting that fact upon the determination. The amount determined is immediately due and payable.

30242. Finality date. If the amount of the tax, interest, and penalty specified in the jeopardy determination is not paid within 10 days after service upon the person of notice of the determination, the determination becomes final, unless a petition for redetermination is filed within the 10

days, and the delinquency penalty and interest provided in Article 6 of this chapter shall attach to the amount specified.

30243. Petition for redetermination; security. The person against whom a jeopardy determination is made may petition for the redetermination thereof pursuant to Article 5 of this chapter. He shall, however, file the petition for redetermination with the board within 10 days after the service upon him of notice of the determination. The person shall at the time of filing the petition for redetermination deposit with the board such security as it may deem necessary to insure compliance with this part. The security may be sold by the board at public sale if it becomes necessary in order to recover any amount due under this part. Notice of the sale may be served upon the person who deposited the security personally or by mail in the same manner as prescribed for service of notice by Section 30206. Upon any such sale, the surplus, if any, above the amount due under this part shall be returned to the person who deposited the security.

30243.5. Administrative hearing. In accordance with such rules and regulations as the board may prescribe, the person against whom a jeopardy determination is made may apply for an administrative hearing for one or more of the following purposes:

- (a) To establish that the determination is excessive; or
- (b) To establish that the sale of property that may be seized after issuance of the jeopardy determination or any part thereof shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person; or
- (c) To request the release of all or a part of the property to the person; or
- (d) To request a stay of collection activities.

The application shall be filed within 30 days after service of the notice of jeopardy determination and shall be in writing and state the specific factual and legal grounds upon which it is founded. No security need be posted to file the application and to obtain this hearing. However, if the person does not deposit within the 10-day period prescribed in Section 30243, such security as the board may deem necessary to ensure compliance with this part, the filing of the application shall not operate as a stay of collection activities, except sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for administrative hearing, the board may allow a filing of the application and grant the person an administrative hearing. The filing of an application pursuant to this section shall not affect provisions of Section 30242 relating to the finality date of the determination or to penalty or interest.

History.—Added by Stats. 1977, Ch. 329, operative January 1, 1978.

30244. Service of notice. Any notice required by this article may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

History.—Added by Stats. 1965, p. 4442, in effect September 17, 1965.

Article 5. Redeterminations

- § 30261. Petition for redetermination.
- § 30261.5. Form and content.
- § 30262. Oral hearing.
- § 30263. Finality date.
- § 30264. Due date; penalty.
- § 30265. Service of notice.
- § 30266. Decrease or increase of determination.

30261. Petition for redetermination. Any person against whom a determination is made under Article 2 (commencing with Section 30201) or 3 (commencing with Section 30221) may petition for a redetermination within 30 days after service upon the person of notice thereof. If a petition for redetermination is not filed within the 30-day period, the determination becomes final at the expiration of the period.

History.—Stats. 1982, Ch. 454, in effect January 1, 1983, substituted “Article 2 (commencing with Section 30201) or 3 (commencing with Section 30221)” for “Article 2 or 3 of this chapter” after “under” in the first sentence.

30261.5. Form and content. Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision upon the petition for redetermination.

History.—Added by Stats. 1967, p. 2329, in effect November 8, 1967.

30262. Oral hearing. If a petition for redetermination is filed within the 30-day period, the board shall reconsider the determination and, if the person has so requested in his petition, shall grant him an oral hearing and shall give him at least 10 days’ notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

30263. Finality date. The order or decision of the board upon a petition for redetermination becomes final 30 days after mailing of notice thereof.

30264. Due date; penalty. All determinations made by the board under Article 2 or 3 of this chapter are due and payable at the time they become final. If they are not paid when due and payable, a penalty of 10 percent of the amount of the determination, exclusive of interest and penalties, shall be added thereto.

30265. Service of notice. Any notice required by this article shall be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

30266. Decrease or increase of determination. The board may decrease or increase the amount of the determination before it becomes final, but may increase the amount of the determination only if a claim for increase is asserted by the board at or before the hearing. Unless the 25 percent penalty imposed by Section 30205 or 30224 applies to the amount of the determination as originally made or as increased, the claim for increase shall be asserted within eight years after the date the return for the period for which the increase is asserted is due.

History.—Added by Stats. 1996, Ch. 1087, in effect January 1, 1997.

Article 6. Interest and Penalties

- § 30281. Interest and penalties.
- § 30282. Excusable delay.
- § 30283. Relief from interest; disaster.
- § 30283.5. Relief of interest.
- § 30284. Penalty interest rates. [Repealed.]
- § 30284. Reasonable reliance on written advice; relief of tax, penalty, and interest.

30281. Interest and penalties. (a) Any person who fails to pay any tax, except a tax determined by the board under Article 2 (commencing with Section 30201) or Article 3 (commencing with Section 30221), within the time required shall pay a penalty of 10 percent of the amount of the tax, in addition to the tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax became due and payable until the date of payment.

(b) Any person who fails to file a return in accordance with the due date set forth in Section 30181 or Section 30183, shall pay a penalty of 10 percent of the amount of the tax with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the tax for which the return is required for any one return.

History.—Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “1 percent” for “one-half of 1 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “(commencing . . . 30221)” for “or 3” after “Article 2” and “adjusted . . . 19269” for “rate . . . thereof” before “from.” Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, deleted “of this chapter” before “within the time,” substituted “modified . . . thereof” for “adjusted annual rate,” substituted “Section 6591.5” for “Section 19269.” Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, added subdivision letter designation (a) before the former sole paragraph, and added subdivisions (b) and (c).

30282. Excusable delay. (a) If the board finds that a person’s failure to make a timely report or payment is due to reasonable cause and circumstances beyond the person’s control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, the person may be relieved of the penalty provided by Sections 30171, 30190, 30221, 30264, and 30281.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

History.—Added by Stats. 1968, p. 1414, in effect November 13, 1968. Stats. 1989, Ch. 768, in effect January 1, 1990, added “30264” after “30221” in first paragraph, and added “or she” after “he” and “or her” after “him” in second paragraph. Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, added subdivision letter designation (a) before first paragraph, added “30190,” after “Sections 30171,” in subdivision (a); added subdivision letter designation (b) before second paragraph, substituted “Except as provided in subdivision (c), any” for “Any” before “person seeking to be relieved” in the first sentence of subdivision (b); and added subdivision (c).

30283. Relief from interest; disaster. If the board finds that a person’s failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 30185, 30190, 30223, and 30281.

Any person seeking to be relieved of the interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

History.—Added by Stats. 1981, Ch. 947, in effect January 1, 1982. Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, added “30190” after “Sections 30185” in the first paragraph; added “or she” after “upon which he” and added “or her” after “bases his” in the second paragraph.

30283.5. Relief of interest. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay tax is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the taxpayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on tax liabilities that arise during taxable periods commencing on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2001, Ch. 251 (AB 1123), in effect January 1, 2002, substituted “this part” for “Sections 30171, 30223, and 30281” after “interest imposed on a person by” in subdivision (a).

30284. Penalty interest rates. [Repealed by Stats. 1985, Ch. 20, effective March 29, 1985, operative July 1, 1985.]

30284. Reasonable reliance on written advice; relief of tax, penalty, and interest. (a) If the board finds that a person’s failure to make a timely report, return, or payment is due to the person’s reasonable reliance on written advice from the board, the person may be relieved of the taxes imposed by this part and any penalty or interest thereto.

(b) For purposes of this section, a person’s failure to make a timely report, return, or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to tax under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to tax, or stating the conditions under which the activity or transaction is subject to tax.

(3) The liability for taxes applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

History.—Added by Stats. 1990, Ch. 987, in effect January 1, 1991.

CHAPTER 5. COLLECTION OF TAX

- | | |
|------------|--|
| Article 1. | Suit for Tax. §§ 30301–30303. |
| 1.5. | Notice to Withhold. §§ 30311–30316. |
| 2. | Priority and Lien of Tax. §§ 30321–30324. |
| 3. | Warrant for Collection of Tax. §§ 30341–30343. |
| 4. | Miscellaneous Provisions. §§ 30351–30354.5. |
| 5. | Seizure and Sale. §§ 30355–30359. |

Article 1. Suit for Tax

- | | |
|----------|-----------------------------|
| § 30301. | Court action. |
| § 30302. | Attachment. |
| § 30303. | Certificate of delinquency. |

30301. Court action. At any time within three years after any amount of tax becomes due and payable, and at any time within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board may transmit notice of the delinquency to the Attorney General, who shall at once proceed by appropriate legal action to collect all sums due the state.

History.—Stats. 1971, p. 3529, operative on and after January 1, 1972, applicable only with respect to certificates of lien or abstracts of judgment filed on or after that date. Substitutes "10 years" for "3 years". Stats. 1977, Ch. 481, operative July 1, 1978, deleted "of a certificate" and substituted "or filing of a notice of state tax lien" following "last recording". Stats. 1980, Ch. 600, operative January 1, 1981, substituted "Section 7171 of the Government Code" for "Section 30322".

30302. Attachment. In the action a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure without the showing required by Section 485.010 of the Code of Civil Procedure.

History.—Stats. 1974, Ch. 1516, effective January 1, 1975, deleted the statement that no bond or affidavit was required previous to the issuing of the attachment, and added the proviso that the writ of attachment may be issued in the described manner.

30303. Certificate of delinquency. In the action a certificate by the board showing the delinquency shall be prima facie evidence of the determination of the tax or the amount of the tax, of the delinquency of the amount of tax, interest, and penalty set forth, and of compliance by the board with all provisions of this part in relation to the computation and determination of the tax.

Article 1.5. Notice to Withhold

- § 30311. Notice to creditors.
- § 30312. Transferability of credits.
- § 30313. Notice to board.
- § 30314. Liability of creditor.
- § 30315. Notice of levy.
- § 30316. Employer withheld earnings.

30311. Notice to creditors. If any person is delinquent in the payment of the amount required to be paid by him or in the event a determination has been made against him which remains unpaid, the board may, not later than three years after the payment became delinquent, or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof personally or by first-class mail to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the delinquent, or person against whom a determination has been made which remains unpaid, or owing any debts to the delinquent or such person. In the case of any state officer, department or agency, the notice shall be given to such officer, department or agency prior to the time it presents the claim of the delinquent taxpayer to the State Controller.

History.—Stats. 1971, p. 3529, operative on and after January 1, 1972, applicable only with respect to certificates of lien or abstract of judgment filed on or after that date. Substitutes “10 years after last recording” for “3 years after last recording”. Stats. 1977, Ch. 481, operative July 1, 1978, deleted “of a certificate” and substituted “or filing of a notice of state tax lien” following “last recording”. Stats. 1978, Ch. 827, effective January 1, 1979, substituted “first-class” for “registered”. Stats. 1980, Ch. 600, operative January 1, 1981, substituted “Section 7171 of the Government Code” for “Section 30322”.

30312. Transferability of credits. After receiving the notice the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the board consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever period expires the earlier.

30313. Notice to board. All persons so notified shall forthwith after receipt of the notice advise the board of all such credits, other personal property, or debts in their possession, under their control, or owing by them. If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice to be effective shall state the amount, interest and penalty due from the person and shall be delivered or mailed to the branch or office of such bank at which such deposit is carried or at which such credits or personal property is held. Notwithstanding any other provision, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice shall only be effective with respect to an amount not in excess of two times the amount, interest and penalty due from the person.

History.—Stats. 1972, Ch. 103, operative July 1, 1973, inserted the words “shall state the amount, interest and penalty due from the person and,” and added the third sentence.

30314. **Liability of creditor.** If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld hereunder, to the extent of the value of the property or the amount of the debts thus transferred or paid he shall be liable to the State for any indebtedness due under this part from the person with respect to whose obligation the notice was given if solely by reason of such transfer or disposition the State is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

Text of section operative through June 30, 2001

30315. **Notice of levy.** (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a distributor, dealer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the distributor, dealer, or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the distributor, dealer, or other person liable for the tax.

(3) Any other payments or credits due or becoming due the distributor, dealer, or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Added by Stats. 1982, Ch. 1589, in effect January 1, 1983. Stats. 1993, Ch. 1113, in effect January 1, 1994, added "(a)"; added a comma following "The board may" and deleted a comma following "notice of levy" in the first paragraph; substituted "these" for "such" following "withhold from"; substituted "the" for "such" following "due from"; substituted "the" for "such" following "the board at"; and substituted "time" for "times" before "as it may designate" in the first paragraph; added "(b)" to the second paragraph; and added subdivision (c). Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted "payments, credits, or other payments," for "credits" after "their control, any", deleted "as" after "Controller at the" in the first sentence, and added "The notice of . . . in subdivision (b)." as the second sentence of subdivision (a); relettered subdivision (b) as (e); relettered subdivision (c) as (b); and added subdivisions (c) and (d).

Text of section operative July 1, 2001

30315. Notice of levy. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a distributor, dealer, or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any tax, interest, or penalties due from the distributor, dealer, or other person, or the amount of any liability incurred by them under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the

Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the distributor, dealer, or other person liable for the tax.

(3) Any other payments or credits due or becoming due the distributor, dealer, or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the taxpayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Added by Stats. 1982, Ch. 1589, in effect January 1, 1983. Stats. 1993, Ch. 1113, in effect January 1, 1994, added "(a)"; added a comma following "The board may" and deleted a comma following "notice of levy" in the first paragraph; substituted "these" for "such" following "withhold from"; substituted "the" for "such" following "due from"; substituted "the" for "such" following "the board at"; and substituted "time" for "times" before "as it may designate" in the first paragraph; added "(b)" to the second paragraph; and added subdivision (c). Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted "payments, credits, or other payments," for "credits" after "their control, any", deleted "as" after "Controller at the" in the first sentence, and added "The notice of . . . in subdivision (b)." as the second sentence of subdivision (a); relettered subdivision (b) as (e); relettered subdivision (c) as (b); and added subdivisions (c) and (d). Stats. 1999, Ch. 991 (SB 45), in effect January 1, 2000, but operative July 1, 2001, substituted "paragraph (29) of subdivision (a) of Section 9102" for "Section 9105" after "as defined in" in subdivision (d).

30316. Employer withheld earnings. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a distributor or other person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 30315 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount

equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

Article 2. Priority and Lien of Tax

- § 30321. Priority of lien.
- § 30322. Recording certificate; lien. [Repealed.]
- § 30322. Liens; perfection and enforceability of.
- § 30323. Release of lien. [Repealed.]
- § 30323.5. Unenforceable liens. [Repealed.]
- § 30324. Certificate of release. [Repealed.]

30321. Priority of lien. The amounts required to be paid by any person under this part together with interest and penalties shall be satisfied first in any of the following cases:

(a) Whenever the person is insolvent.

(b) Whenever the person makes a voluntary assignment of his assets.

(c) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.

(d) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

This section does not give the state a preference over any lien or security interest which was recorded or perfected prior to the time when the state records or files its lien as provided in Section 7171 of the Government Code.

The preference given to the state by this section shall be subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.

History.—Stats. 1977, Ch. 481, operative July 1, 1978, in next to the last paragraph, deleted "any recorded lien which attached prior to the date when the amounts required to be paid became a lien." following "preference over" and substituted the above language. Stats. 1979, Ch. 373, effective January 1, 1980, changed "1026" to "1206" in (d). Stats. 1980, Ch. 600, operative January 1, 1981, substituted "as provided in Section 7171 of the Government Code" for "pursuant to subdivision (b) or (c) of Section 30322".

30322. **Recording certificate; lien.** [Repealed by Stats. 1977, Ch. 481, operative July 1, 1978.]

30322. **Liens; perfection and enforceability of.** (a) If any person fails to pay any amount imposed under this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien. Such a lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are “due and payable” on the following dates:

(1) For amounts disclosed on a return received by the board before the date the return is delinquent, the date the return would have been delinquent;

(2) For amounts disclosed on a return filed on or after the date the return is delinquent, the date the return is received by the board;

(3) For amounts determined under Section 30241 (pertaining to jeopardy assessments), the date the notice of the board’s finding is mailed or issued;

(4) For all other amounts, the date the assessment is final.

History.—Added by Stats. 1977, Ch. 481, operative July 1, 1978. Stats. 1979, Ch. 322, effective January 1, 1980, changed wording of second paragraph of (a), deleted reference to judgment creditors following second sentence of (f). Changed “January 1, 1978” to “July 1, 1978” in (g). Stats. 1980, Ch. 600, operative January 1, 1981, deleted part of first sentence in (a) following “lien”; substituted present second sentence for former second sentence; renumbered second paragraph of (a) to become (b); deleted former (b), (c), (d), (e), (f), and (g).

30323. **Release of lien.** [Repealed by Stats. 1980, Ch. 600, operative January 1, 1981.]

30323.5. **Unenforceable liens.** [Repealed by Stats. 1980, Ch. 600, operative January 1, 1981.]

30324. **Certificate of release.** [Repealed by Stats. 1980, Ch. 600, operative January 1, 1981.]

Article 3. Warrant for Collection of Tax

§ 30341. Warrant; limitation period.

§ 30342. Fees and expenses.

§ 30343. Collection of fees.

30341. **Warrant; limitation period.** At any time within three years after any person is delinquent in the payment of any amount herein required to be paid, or within 10 years after the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board or its authorized representative may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff or marshal and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy and a sale pursuant to a writ of execution.

History.—Stats. 1965, p. 2047, in effect September 17, 1965, substituted “10” years for “three” years in the first sentence. Stats. 1977, Ch. 481, operative July 1, 1978, deleted “of a certificate” and substituted “or filing of a notice of state tax lien” following “last recording”. Stats. 1980, Ch. 600, operative January 1, 1981, substituted “Section 7171 of the Government Code” for “Section 30322”. Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal or constable” after “to any sheriff” in the second sentence.

30342. **Fees and expenses.** The board shall pay the sheriff or marshal, upon the completion of his or her services pursuant to a warrant, the same fees, commissions, and expenses for his or her services as are provided by law for similar services pursuant to a writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

History.—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal or constable” after “pay the sheriff”, and added “or her” after “completion of his” and after “expenses for his”, in the first sentence.

30343. **Collection of fees.** The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from him by virtue of the warrant or in any other manner provided in this part for the collection of the tax.

Article 4. Miscellaneous Provisions

- § 30351. Remedies; cumulative.
- § 30352. Board; authority of.
- § 30353. Furnishing of partnership agreement.
- § 30354. Installment payment agreement.
- § 30354.5. Installment payment annual statement.

30351. **Remedies; cumulative.** The remedies of the State provided for in this chapter are cumulative, and no action taken by the board or Attorney General constitutes an election by the State to pursue any remedy to the exclusion of any other remedy for which provision is made in this part.

30352. **Board; authority of.** In all proceedings under this chapter the board may act on behalf of the people of the State of California.

30353. **Furnishing of partnership agreement.** The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

History.—Added by Stats. 1996, Ch. 1003, in effect January 1, 1997.

30354. **Installment payment agreement.** (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any taxes due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the taxpayer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the tax, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are

terminated under subdivision (b). The collection of taxes, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the tax to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 30264.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, added subdivision (e).

30354.5. Installment payment annual statement. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 30354 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year and the remaining balance as of the end of the year.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

Article 5. Seizure and Sale *

<u>§ 30355.</u>	<u>Seizure and sale.</u>
<u>§ 30356.</u>	<u>Notice of sale.</u>
<u>§ 30357.</u>	<u>Conduct of sale.</u>
<u>§ 30358.</u>	<u>Disposition of proceeds.</u>
<u>§ 30359.</u>	<u>Repeal date.</u>

30355. Seizure and sale. Whenever any person is delinquent in the payment of the obligations imposed under this part, the board or its authorized representative may seize any property, real or personal, subject to the lien of the tax and thereafter sell the property, or a sufficient part of it, at public auction to pay the tax due together with any interest and penalties imposed for the delinquency and any costs incurred on account of the seizure and sale.

30356. Notice of sale. Notice of the sale and the time and place thereof shall be given in writing at least 20 days before the date set for the sale to the delinquent person and to all persons who have an interest of record in the property seized. The notice shall be personally served or enclosed in an envelope addressed to the person at his or her last known residence or place of business in this state. If not personally served, the notice shall be deposited in the United States mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code, in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of

* Article 5 was added by Stats. 2003, Ch. 890 (AB 71), in effect January 1, 2004.

general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest in the property is to be sold.

(b) One conspicuous place on the property. The notice shall contain a description of the property to be sold, a statement of the amount due, including tax, penalties, interest, and costs, the name of the person, and the further statement that unless the amount is paid on or before the time fixed in the notice of sale, the property, or so much of it as may be necessary, will be sold in accordance with law and the notice.

30357. **Conduct of sale.** At any sale the board or its authorized agent shall sell the property in accordance with the law and the notice and shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the taxpayer.

30358. **Disposition of proceeds.** If upon any sale the moneys received exceed the amount due to the state from the taxpayer, the board shall return the excess to the taxpayer and obtain his or her receipt. If any person having an interest in or lien upon the property files with the board prior to the sale notice of his or her interest or lien, the board shall withhold payment of any excess pending a determination of the rights of the respective parties to the excess moneys by a court of competent jurisdiction. If for any reason the receipt of the taxpayer is not available, the board shall deposit the excess moneys with the Controller, as trustee for the taxpayer, his or her heirs, successors, or assigns.

30359. **Repeal date.** This article shall remain in effect until January 1, 2010, and as of that date shall be repealed.

CHAPTER 6. OVERPAYMENTS AND REFUNDS

- Article 1. Claim for Refund. §§ 30361–30367.
- 2. Recovery of Erroneous Refunds. §§ 30381–30384.
- 3. Suit for Refund. §§ 30401–30407.
- 4. Cancellations. § 30421.

Article 1. Claim for Refund

- § 30361. Credits and refunds.
- § 30362. Claim; limitations period.
- § 30362.1. Claim limitation; financially disabled.
- § 30363. Form and content of claim.
- § 30364. Failure to file claim.
- § 30365. Notice of action.
- § 30366. Interest.
- § 30367. Disallowance of interest.

30361. Credits and refunds. If the board determines that any amount not required to be paid under this part has been paid by any person, the board

shall set forth that fact in its records and certify the amount collected in excess of the amount legally due and the person from whom it was collected or by whom it was paid. The excess amount collected or paid shall be credited by the board on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.—Stats. 1963, p. 3112, in effect September 20, 1963, added the words “from whom the excess amount was collected or by whom it was paid” in the first paragraph, and substituted “two hundred fifty dollars (\$250)” for “one hundred dollars (\$100)” in the second paragraph. Stats. 1965, p. 2057, in effect September 17, 1965, substituted “one thousand dollars (\$1,000)” for “two hundred fifty dollars (\$250)” in the last paragraph. Stats. 1968, p. 1199, in effect November 13, 1968, revised this section and deleted “assigns” from the persons listed in the first paragraph to whom refunds shall be made. Stats. 1977, Ch. 921, operative January 1, 1978, substituted “five thousand dollars (\$5,000)” for “one thousand dollars (\$1,000)”. Stats. 1985, Ch. 591, effective January 1, 1986, substituted “fifteen thousand dollars (\$15,000)” for “five thousand dollars (\$5,000)” in second paragraph. Stats. 1988, Ch. 1029, in effect (\$15,000) following “amount not exceeding” and added “or her” following “his” in the first and second paragraphs. Stats. 1994, Ch. 726, in effect September 22, 1994, deleted “to the State Board of Control” after “records and certify”; substituted “The” for “If approved by the State Board of Control, the” before “excess amount collected”; added “Any proposed determination . . . of that determination” as the second sentence; and deleted the second paragraph which read: “In the case, however, of a determination by the board that an amount not exceeding fifty thousand dollars (\$50,000) was not required to be paid under this part, the board without obtaining the approval of the State Board of Control may credit the amount on any amounts then due and payable under this part from the person by whom the amount was paid and may refund the balance to the person or his or her successors, administrators, or executors.”

Note.—Stats. 1971, p. 1785, in effect October 6, 1971, provides a distributor, wholesaler or dealer whose stock of tax-paid cigarettes were destroyed or damaged so that they could not be sold as a result of the earthquakes occurring in southern California between January 1, 1971, and March 1, 1971, may file a claim for refund of the tax paid with respect to such cigarettes by the distributor, wholesaler or dealer. No refund shall be allowed after one year from the effective date of this act unless a claim for refund has been filed within such period.

30362. Claim; limitations period. (a) Except as provided in subdivision (b) no refund shall be approved by the board after three years from the 25th day after the close of the monthly period for which the overpayment was made, or, with respect to a determination made under Chapter 4 of this part, after six months from the date the determination becomes final, or after six months from the date of overpayment, whichever period expires the later, unless a claim therefor is filed with the board within such a period. No credit shall be approved by the board after the expiration of such period unless a claim for credit is filed with the board within such period, or unless the credit relates to a period for which a waiver is given pursuant to Section 30208.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 30208 if a claim therefor is filed with the board before the expiration of the period agreed upon.

History.—Stats. 1965, p. 4442, in effect September 17, 1965, revised this section to provide for a credit and refund when a waiver is given pursuant to § 30208. Stats. 1968, p. 1102, in effect November 13, 1968, substituted “25th” for “15th”.

30362.1. Claim limitation; financially disabled. (a) The limitation period specified in Section 30362 shall be suspended during any period of a person’s life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of

medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including *res judicata*, as of the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

30363. Form and content of claim. Every claim for refund or credit shall be in writing and shall state the specific grounds upon which it is founded.

30364. Failure to file claim. Failure to file a claim within the time prescribed in this article constitutes a waiver of all demands against the State on account of the overpayment.

30365. Notice of action. Within 30 days after disallowing any claim in whole or in part, the board shall serve written notice of its action on the claimant in the manner prescribed for the service of a notice of a deficiency determination.

30366. Interest. Interest shall be computed, allowed, and paid upon any overpayment of any amount of tax at the modified adjusted rate per month established pursuant to Section 6591.5, from the 26th day of the calendar month following the period during which the overpayment was made. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the 25th day of the calendar month following the date upon which the claimant, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

History.—Stats. 1963, p. 3113 in effect September 20, 1963, substituted "15th" for "fifteenth" in the first paragraph and in subdivision (a). Stats. 1967, p. 2521, operative August 1, 1967, substituted "20th" for "15th" in two places. Stats. 1968, p. 1102, in effect November 13, 1968, substituted "25th" for "20th" in two places. Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted "4 percent" for "one-half of 1 percent." Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted "adjusted . . . 19269" for "rate . . . month" before "from" in the first paragraph. Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, substituted "modified . . . month" for "adjusted annual rate" before "established," substituted "Section 6591.5" for "Section 19269." Stats. 1992, Ch. 1336, in effect January 1, 1993, substituted "26th" for "25th" after "from the", deleted "monthly" before "period", substituted "during" for "for" after "period", and substituted ". In addition, a" for "but no" in the first sentence; and added "as follows" after "paid" in the second paragraph. Stats. 1996, Ch. 320, in effect January 1, 1997, deleted "or the date upon which the claim is certified to the State Board of Control, whichever date is the earlier" after

"may be filed" in subdivision (a). Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, added "if he or she has not already filed a claim," after "which the claimant" and added "or the date . . . date is earlier" after "may be filed" in subdivision (a).

30367. Disallowance of interest. (a) If the board determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(b) If any person who has filed a claim for refund requests the board to defer action on the claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the board to defer action on the claim.

History.—Stats. 1998, Ch. 420 (SB 2230), in effect January 1, 1999, added subdivision designation "(a)" and added subdivision (b).

Article 2. Recovery of Erroneous Refunds

- § 30381. Erroneous refund. Actions.
- § 30382. Place of trial.
- § 30383. Rules of procedure, etc.
- § 30384. Interest on erroneous refunds.

30381. Erroneous refund. Actions. (a) The board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, in an action brought in a court of competent jurisdiction in the county of Sacramento in the name of the people of the State of California.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 3 (commencing with Section 30173) of Chapter 3.5, or Article 2 (commencing with Section 30201) or Article 4 (commencing with Section 30241) of Chapter 4. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

History.—Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, added subdivision designation "(a)", substituted "that" for "which" after "or part thereof" and substituted "the county of Sacramento" for "any city or county in this State in which the Attorney General has an office," after "competent jurisdiction in" in subdivision (a); and added subdivision (b).

Note.—SEC. 61. of Stats. 1998, Ch. 609 (SB 2232), effective January 1, 1999, states: It is the intent of the Legislature in enacting those provisions of this act that allow the State Board of Equalization to recover refunds administratively that no increase in taxpayer costs result from taxpayer compliance with these provisions.

30382. Place of trial. In any action brought pursuant to subdivision (a) of Section 30381, the court may, with the consent of the Attorney General, order a change in the place of trial.

History.—Added by Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999.

30383. Rules of procedure, etc. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 30381, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals shall apply to the proceedings.

History.—Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted "any action brought . . . of Section 30381," for "the action" after "General shall prosecute" and substituted "shall apply" for "are applicable" after "trials, and appeals".

30384. **Interest on erroneous refunds.** (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of tax nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 30381, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 30381 on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

Article 3. Suit for Refund

- § 30401. Enjoining collection forbidden.
- § 30402. Necessity of refund claim.
- § 30403. Action for refund; limitation.
- § 30404. When refund claim not acted upon.
- § 30405. Failure to bring suit within time.
- § 30406. Disposition of amount of judgment; interest.
- § 30407. Judgment for assignee forbidden.

30401. **Enjoining collection forbidden.** No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this State or against any officer of the State to prevent or enjoin the collection under this part of any tax or any amount of tax required to be collected.

30402. **Necessity of refund claim.** No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally determined or collected unless a claim for refund or credit has been duly filed.

30403. **Action for refund; limitation.** Within 90 days after the mailing of the notice of the board's action upon a claim for refund or credit, the claimant may bring an action against the board on the grounds set forth in the claim in a court of competent jurisdiction in any city or county in the State in which the Attorney General has an office for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

30404. **When refund claim not acted upon.** If the board fails to mail notice of its action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board of its action on the claim, consider the claim disallowed and bring an action against the board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

30405. **Failure to bring suit within time.** Failure to bring a suit or an action within the time specified in this article constitutes a waiver of all demands against the State on account of an alleged overpayment.

30406. Disposition of amount of judgment; interest. If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any amounts due from the plaintiff under this part, and the balance of the judgment shall be refunded to the plaintiff. In any judgment, interest shall be allowed at the modified adjusted rate per annum established pursuant to Section 6591.5, upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

History.—Stats. 1975, Ch. 661, operative to interest accruing on or after January 1, 1976, substituted “12 percent” for “6 percent.” Stats. 1982, Ch. 5, First Extra Session, in effect May 27, 1982, substituted “adjusted . . . 19269” for “rate . . . annum” before “upon” in the second sentence. Stats. 1984, Ch. 1020, effective January 1, 1985, operative July 1, 1985, substituted “modified . . . annum” for “adjusted annual rate,” substituted “Section 6591.5” for “Section 19269.”

30407. Judgment for assignee forbidden. A judgment shall not be rendered in favor of the plaintiff in any action brought against the board to recover any amount paid when the action is brought by or in the name of an assignee of the person making the payment or by any person other than the person making the payment.

Article 4. Cancellations

§ 30421. Cancellation of determination.

30421. Cancellation of determination. If any amount has been illegally determined, the board shall set forth that fact in its records, certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.—Stats. 1963, p. 3113, in effect September 20, 1963, added the words “that fact” in the first sentence, and substituted “two hundred fifty dollars (\$250)” for “one hundred dollars (\$100)” in the first and last sentences. Stats. 1965, p. 2058, in effect September 17, 1965, substituted “one thousand dollars (\$1,000)” for “two hundred fifty dollars (\$250)” in the first and last sentences. Stats. 1977, Ch. 921, operative January 1, 1978, substituted “five thousand dollars (\$5,000)” for “one thousand dollars (\$1,000)”. Stats. 1985, Ch. 591, effective January 1, 1986, substituted “fifteen thousand dollars (\$15,000)” for “five thousand dollars (\$5,000)” after “in excess of” and “fifteen thousand dollars (\$15,000)” for “five thousand dollars (\$5,000)” after “not exceeding.” Stats. 1988, Ch. 1029, in effect January 1, 1989, substituted “fifty thousand dollars (\$50,000)” for “fifteen thousand dollars (\$15,000)” before “has been illegally determined” in the first and last sentences. Stats. 1994, Ch. 726, in effect September 22, 1994, deleted “in excess of fifty thousand dollars (\$50,000)” after “If any amount”; substituted a comma for “and” after “in its records”; deleted “to the State Board of Control” after “certify”; added “to be” after “amount determined”; deleted “. If the State Board of Control approves, it shall” after “determination was made”; and substituted “Any proposed determination . . . of that determination” for “If an amount not exceeding fifty thousand dollars (\$50,000) has been illegally determined, either by the person filing a return or by the board, the board without certifying this fact to the State Board of Control shall authorize the cancellation of the amount upon the records of the board.”

CHAPTER 7. REQUIREMENTS FOR TRANSPORTERS

§ 30431. Transporter’s permit.

§ 30432. Invoices covering shipment.

30431. Transporter’s permit. Any transporter desiring to possess or acquire for transportation or transport upon the highways, roads or streets of this state more than 400 cigarettes which are not contained in packages to which are affixed California cigarette stamps or meter impressions or

tobacco products with a value of twenty-five dollars (\$25) or more shall obtain a permit from the board authorizing such transporter to possess or acquire for transportation or transport the cigarettes or tobacco products, and he shall have the permit in the transporting vehicle during the period of transportation of the cigarettes or tobacco products. The application for the permit shall be in such form and shall contain such information as may be prescribed by the board. The board may issue a permit for a single load or shipment or for a number of loads or shipments to be transported under specified conditions.

History.—Stats. 1967, p. 2522, operative August 1, 1967, substituted “more than 200 cigarettes” for “any cigarettes” and “in the transporting vehicle during the period of transportation of the cigarettes” for “in his possession while the cigarettes are in his possession.” Stats. 1968, p. 2121, in effect November 13, 1968, substituted “400” for “200”. Stats. 1989, Ch. 634, in effect September 21, 1989, added “or tobacco . . . (\$25) or more” after “impressions” and added “or tobacco products” after “cigarettes” in first sentence.

30432. Invoices covering shipment. Each transporter who shall transport or possess or acquire for the purpose of transporting upon the highways, roads or streets of this state more than 400 cigarettes which are not contained in packages to which are affixed California cigarette tax stamps or meter impressions or tobacco products with a value of twenty-five dollars (\$25) or more is required to have in the transporting vehicle during the period of transportation invoices, bills of lading or delivery tickets covering the cigarettes or tobacco products being transported which shall show the name and address of the consignor or seller, the name and address of the consignee or purchaser and the quantity and brands of the cigarettes or tobacco products transported.

History.—Stats. 1967, p. 2522, operative August 1, 1967, substituted “more than 200” for “any” and “in the transporting vehicle during the period of transportation” for “in his actual possession,” and added “delivery tickets” and the last phrase indicating what the invoices, etc., must show. Stats. 1968, p. 2121, in effect November 13, 1968, substituted “400” for “200”. Stats. 1989, Ch. 634, in effect September 21, 1989, added “or tobacco . . . (\$25) or more” after “impressions” and added “or tobacco products” after “cigarettes”.

CHAPTER 7.5. SEIZURE AND FORFEITURE *

- § 30435. Inspections by board.
- § 30436. Property forfeited.
- § 30437. Notice of seizure and forfeiture.
- § 30438. Petition for release or recovery; limitation period.
- § 30439. Determination of petition.
- § 30440. Court action by petitioner; limitation period.
- § 30441. Deposit in lieu of property.
- § 30442. Court action by the board; limitation period.
- § 30443. Service of petition on interested persons.
- § 30444. Answer to petition.
- § 30445. Court procedure.
- § 30446. Court hearing; notice.
- § 30447. Court hearing; evidence.
- § 30448. Court order.
- § 30449. Sale and destruction of forfeited property.

30435. Inspections by board. (a) An employee of the board, upon presentation of the appropriate identification and credentials, is authorized to enter into, and conduct an inspection of any building, facility, site, or place described in subdivision (b).

* Chapter 7.5 was added by Stats. 1967, p. 2522, operative August 1, 1967.

(b) Any building, facility, site, or place at which cigarette or tobacco products are sold, produced, or stored, or any building, facility, site, or place for which there is evidence of either the evasion of the taxes imposed under this part, or the failure to comply with the requirements of the Master Settlement Agreement, as defined in subdivision (e) of Section 104556 of the Health and Safety Code, including, but not limited to, Section 30165.1.

(c) Any inspection performed under the authority of this section shall be performed in a reasonable manner and at a reasonable time, taking into consideration the normal business hours of the building, facility, site, or place that is inspected.

(d) Any person that refuses to allow an inspection authorized under this section is subject to the penalty imposed by Section 30471.

(e) This section shall remain in effect until January 1, 2010, and as of that date shall be repealed.

History.—Added by Stats. 2003, Ch. 890 (AB 71), in effect January 1, 2004.

30436. Property forfeited. The following property, upon seizure by the board, is hereby forfeited to the state:

(a) Cigarettes or tobacco products transported upon the highways, roads or streets of this state in violation of Section 30431 or Section 30432.

(b) Cigarettes not contained in packages to which are affixed California cigarette tax stamp or meter impressions or tobacco products upon which the tobacco products surtax has not been paid, which are offered for sale, possessed, kept, stored, or owned by any person with the intent of the person to sell the cigarettes or tobacco products without payment of the taxes imposed by this part.

(c) Any cigarette or tobacco product vending machine, together with the cigarettes, tobacco products, money or other contents thereof, that has been loaded, in whole or in part, with packages of cigarettes that do not have California cigarette tax stamps or meter impressions affixed or tobacco products upon which the tobacco products surtax has not been paid.

(d) Cigarettes contained in packages to which are affixed California cigarette tax stamps or meter impressions in violation of Section 30163.

(e) Cigarettes or tobacco products to which are affixed California cigarette tax stamps or meter impressions, or for which tax is paid pursuant to Sections 30123 and 30131.2, in violation of Section 30165.1, regardless of whether the violation is subject to the defense described in paragraph (2) of subdivision (i) of Section 30165.1.

History.—Stats. 1989, Ch. 634, in effect September 21, 1989, added “or tobacco products” after “cigarettes” in subdivisions (a), (b) and (c), added “or tobacco . . . been paid” after “impressions” in subdivisions (b) and (c), and added “or tobacco product” before “vending machine” in subdivision (c). Stats. 1999, Ch. 935 (SB 702), in effect October 10, 1999, added subdivision (d). Stats. 1999, Ch. 941 (SB 1231), in effect January 1, 2000, substituted “Cigarettes contained in packages to which are affixed California cigarette tax stamps or meter impressions in violation of

Section 30163" for "Cigarettes contained in packages that are stamped or metered in violation of Section 30163" in subdivision (d). Stats. 2003, Ch. 890 (AB 71), in effect January 1, 2004, substituted "state" for "State of California" after "is hereby forfeited to" in the first sentence; deleted "the provisions of" after "in violation of" in subdivision (a); added "," after "kept, stored" in subdivision (b); substituted "that" for "which" after "contents thereof," and after "with packages of cigarettes", and added "," after "has been loaded" and after "in whole or in part" in subdivision (c); and added subdivision (e).

30437. Notice of seizure and forfeiture. Notice of the seizure and forfeiture of the property described in Section 30436 shall be given by the board as follows:

(a) Notice shall be given by personal service or by certified mail to all persons known by the board to have any right, title or interest in the property.

(b) (1) Except as provided in paragraph 2, the board shall include a notice of seizure and forfeiture on its Web site for a period of six months from the notice of seizure.

(2) Web site notification is not required when the amount of cigarettes seized is less than 61 cartons of 200 cigarettes each or an equivalent amount of tobacco products.

(c) Notice shall include a description of the property, the reason for the seizure, and the time and place of the seizure.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, restructured the entire section by retaining the basic seizure reporting requirements but breaking it down into subdivisions (a), (b), and (c) and added minimum carton seizure criteria contained in (b)(2). Stats. 2004, Ch. 82 (AB 2491), in effect June 30, 2004, substituted "certified" for "registered" after "service or by" in subdivision (a); added "the board shall include a" after "in paragraph (2).", substituted "on its Web site . . . months from" for "shall be given by one publication in a newspaper of general circulation in the county where", added "notice of" after "months from the", and deleted "was made as follows:" in paragraph (1) of subdivision (b); deleted former subdivisions (b)(1)(A) and (b)(2)(B) which provided "(A) To all persons unknown by the board who may have a right, title, or interest in the property." and "(B) To all persons known by the board to have a right, title, or interest in the property but who cannot be found."; and substituted "Web site notification" for "Newspaper publication" before "is not required" in paragraph (2) of subdivision (b).

30438. Petition for release or recovery; limitation period. Any person owning or claiming any interest in the property may file a verified petition with the board stating his interest in the property and requesting the release or recovery of the property on the ground that the property was erroneously or illegally seized. Any person served personally or by mail under Section 30437 shall file the petition within 20 days from the date of the personal service upon him or the date of the mailing of the notice to him. Any person not served personally or by mail under that section shall file the petition within 20 days from the date of publication of the notice. The failure of any such person to file a timely verified petition shall constitute a bar to his right to any interest in the property, except insofar as the rights of any such person may be established in an action filed by the board under this chapter.

30439. Determination of petition. If the board determines that the property was seized erroneously or illegally, it shall order the release of the property. If the board denies the petition for the release or recovery of the property, notice of the denial shall be mailed within five days to the petitioner.

30440. Court action by petitioner; limitation period. Within 20 days from the date of the mailing of the board's notice of denial of the petition, the petitioner may file an action against the board in the Superior Court of the County of Sacramento for the release or recovery of the property on the ground that the property was erroneously or illegally seized. The failure of the petitioner to file a timely action shall constitute a bar to his right to any interest in the property, except insofar as the rights of the petitioner may be established in an action filed by the board under this chapter. The court shall determine whether the seizure of the property was in accordance with law and shall enter an appropriate order for the disposition of the property.

30441. Deposit in lieu of property. Within 20 days after the seizure of property under this chapter, any person owning or claiming an interest in the property may offer to deposit with the board an amount of money equal to the fair market value of the property as determined by the board. If the board is satisfied that the property will not be used, transported or sold in violation of any provision of this part, the board shall accept the deposit and release the property. The money so deposited shall be held by the board in lieu of the seized property and shall be treated in all respects in the same manner as that property.

30442. Court action by the board; limitation period. Notwithstanding any other provisions of this chapter, upon making a seizure of property under Section 30436, the board may at any time prior to the sale or other disposition of the property commence an action to determine the rights of the state to the property. The action shall be commenced in the superior court of the county in which the seizure was made by petitioning the court for a judgment confirming the seizure and forfeiture of the property. The petition shall describe the property, the grounds for seizure and the time and place of the seizure.

30443. Service of petition on interested persons. Copies of the petition shall be served personally or by registered or certified mail on all persons known by the board to have any right, title or interest in the property seized. Unknown persons, or any known person who cannot be found, having any right, title or interest in the property shall be served by one publication of the petition in the manner prescribed for publication of the notice of seizure and forfeiture under Section 30437.

30444. Answer to petition. Any person claiming any right, title or interest in the property may within 20 days after service of the petition upon him file an answer to the petition. The answer shall allege facts to show the interest of the claimant in the property and to establish that the seizure and forfeiture was erroneous or illegal. A copy of the answer shall be served on the board at its office in Sacramento.

30445. **Court procedure.** If at the expiration of 20 days after the petition has been personally served, mailed or published there is no answer on file, the court shall within 30 days thereafter receive evidence in support of the seizure and forfeiture and shall, upon being satisfied of the validity thereof, enter judgment confirming the seizure and forfeiture.

30446. **Court hearing; notice.** If a timely answer has been filed, the proceeding shall be set for hearing on a day within 30 days after the expiration of the period for filing of an answer. Notice of the hearing shall be given by the clerk of the court to each person filing an answer.

30447. **Court hearing; evidence.** At the time set for the hearing any person having a timely answer on file may offer evidence to establish that the seizure and forfeiture of the property was erroneous or illegal.

30448. **Court order.** The court shall determine whether the seizure of the property was in accordance with law and enter an appropriate order for the disposition of the property.

30449. **Sale and destruction of forfeited property.** (a) Except as provided in subdivision (b), (c), or (d), any property, except money, forfeited to the state under this chapter shall be sold by the board at public auction. Notice of the sale shall be given by posting a written notice of the time and place of sale in three public places in the county where the property is to be sold for not less than five days nor more than 10 days before the sale. If the board is unable to sell any property forfeited to the state under this part or, if the board determines that the property is unsalable, it may destroy that property.

(b) Any property forfeited to the state pursuant to subdivision (e) of Section 30436 shall be destroyed.

(c) Any cigarettes forfeited to the state pursuant to subdivision (b) of Section 30436 shall be destroyed.

(d) Any cigarettes or tobacco products forfeited to the state pursuant to Division 8.6 (commencing with Section 22970) of the Business and Professions Code shall be destroyed.

(e) A record shall be kept of all property destroyed pursuant to this section showing the nature of the property, the quantity, the reason for, and the manner of destruction. The proceeds of the sale and any money forfeited to the state shall be deposited in the State Treasury to the credit of the General Fund.

History.—Stats. 1968, p. 2122, in effect November 13, 1968, added the second, third and fourth sentences. Stats. 2003, Ch. 890 (AB 71), in effect January 1, 2004, established the former first, second and third sentences as subdivision (a), substituted "Except as provided in subdivision (b), (c), or (d), any" before "property, except money, forfeited" in the first sentence, substituted "the" for "such" after "Notice of" and substituted "10" for "ten" after "nor more than" in the second sentence, added "," after "unsalable" and substituted "that property" for "such property" after "it may destroy" in the third sentence of subdivision (a); added subdivisions (b), (c) and (d); and established the former fourth and fifth sentences as subdivision (e).

CHAPTER 8. ADMINISTRATION

- Article 1. Administration. §§ 30451-30456.
2. The California Taxpayers' Bill of Rights. §§ 30458-~~30459~~.8.

Uncodified Sections

1. Multiagency task force.

Article 1. Administration

- § 30451. Enforcement by board; rules and regulations.
§ 30452. Employees and representatives of board.
§ 30453. Records.
§ 30454. Examination of records; supplemental reports.
§ 30455. Divulging of information forbidden.
§ 30455.5. Information confidential; tax preparer.
§ 30456. Certificate of notice.

30451. Enforcement by board; rules and regulations. The board shall enforce the provisions of this part and may prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of this part. The board may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.

30452. Employees and representatives of board. The board may employ accountants, auditors, investigators, assistants, and clerks necessary for the efficient administration of this part and may designate representatives to conduct hearings, or perform any other duties imposed by this part or other laws of this State upon the board.

30453. Records. Every distributor and every person dealing in, transporting, or storing cigarettes or tobacco products in this state shall keep such records, receipts, invoices, and other pertinent papers with respect thereto in such form as the board may require.

History.—Stats. 1989, Ch. 634, in effect September 21, 1989 added “or tobacco products” after “storing cigarettes” and substituted “state” for “State” before “shall keep such”.

30454. Examination of records; supplemental reports. The board or its authorized representative may make such examinations of the books, papers, records, and equipment of any person dealing in, transporting, or storing cigarettes or tobacco products and such other investigations as it may deem necessary in carrying out the provisions of this part.

In addition to any other reports required under this part, the board may, by rule and otherwise, require additional, other, or supplemental reports from licensed distributors, dealers, transporters, common and private carriers, warehousemen, bailees, and other persons, including reports of shipments of cigarettes or tobacco products from a point outside this state to a point within this state, and prescribe the form, including verification, of the information to be given on, and the times for filing of, such additional, other, or supplemental reports.

History.—Stats. 1967, p. 2525, operative August 1, 1967, added “licensed” before “distributors” and added “including reports of shipments of cigarettes from a point outside this state to a point within this state.” Stats. 1989, Ch. 634, in effect September 21, 1989, added “or tobacco products” after “cigarettes” in first and second paragraphs.

30455. Divulging of information forbidden. It is unlawful for the board or any person having an administrative duty under this part to make known in any manner whatever the business affairs, operations, or information obtained by an investigation of records and equipment of any person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures, or any particular thereof, set forth or disclosed in any report, or to permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person. However, the Governor may, by general or special order, authorize examination of the records maintained by the board under this part by other state officers, by tax officers of another state, by the federal government, if a reciprocal arrangement exists, or by any other person.

Successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information as to the items included in the measure and amounts of any unpaid tax or amounts of tax required to be collected, interest, and penalties.

Nothing in this section shall prevent the board from exchanging with officials of other states information concerning interstate shipments of cigarettes or tobacco products.

Any violation of this section is a misdemeanor and is punishable by a fine not exceeding one thousand dollars (\$1,000), by imprisonment not exceeding one year, or by both, in the discretion of the court.

History.—Stats. 1989, Ch. 634, in effect September 21, 1989, substituted “federal government” for “Federal Government” in first paragraph and added “or tobacco products” after “cigarettes” in second paragraph. Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, added “Successors, receivers, trustees, . . . interest, and penalties.” as the second paragraph.

30455.5. Information confidential; tax preparer. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 4 (commencing with Section 30181) of this part, or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return, or

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person’s consent or pursuant to a subpoena, court order, or other compulsory legal process.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

30456. Certificate of notice. A certificate by the board or an employee of the board stating that a notice required by this part was given by mailing or personal service shall be prima facie evidence in any administrative or

judicial proceeding of the fact and regularity of the mailing or personal service in accordance with any requirement of this part for the giving of a notice. Unless otherwise specifically required, any notice provided by this part to be mailed or served may be given either by mailing or by personal service in the manner provided for giving notice of a deficiency determination.

History.—Added by Stats. 1974, Ch. 610, effective January 1, 1975.

Article 2. The California Taxpayers' Bill of Rights *

- § 30458. Administration.
- § 30458.1. Taxpayers' Rights Advocate.
- § 30458.2. Education and information program.
- § 30458.3. Annual hearing with taxpayers.
- § 30458.4. Preparation of statements by board.
- § 30458.5. Limit on revenue collected or assessed.
- § 30458.6. Evaluation of employee's contact with taxpayers.
- § 30458.7. Plan to timely resolve claims and petitions.
- § 30458.8. Procedures relating to protest hearings.
- § 30458.9. Reimbursement of taxpayer.
- § 30459. Investigation for nontax administration purposes.
- § 30459.1. Settlement of disputed liabilities. [Repealed.]
- § 30459.1. Settlement authority.
- § 30459.2. Release of levy.
- § 30459.2A. Return of property.
- § 30459.3. Exemptions from levy.
- § 30459.4. Reimbursement of bank charges.
- § 30459.5. Mailing of preliminary notice of lien.
- § 30459.6. Revocation or suspension of license.
- § 30459.7. Disregard by board employee or officer.
- § 30459.8. Revenues and disbursements; Web site posting.

30458. Administration. The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

30458.1. Taxpayers' Rights Advocate. (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of taxpayer complaints and problems, including any taxpayer complaints regarding unsatisfactory treatment of taxpayers by board employees, and staying actions where taxpayers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

30458.2. Education and information program. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Taxpayers newly registered with the board.
- (2) Board audit and compliance staff.

* Article 2 was added by Stats. 1992, Ch. 438, in effect January 1, 1993.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered taxpayers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of taxpayer educational materials currently produced by the board that explain the most common areas of taxpayer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to taxpayer activities and areas of recurrent taxpayer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “and compliance” after “program for audit” in paragraph (4) of subdivision (b).

30458.3. Annual hearing with taxpayers. The board shall conduct at least two hearings per year before the full board where industry representatives and individual taxpayers are allowed to present their proposals on changes to the Cigarette and Tobacco Products Tax Law that may further advance voluntary compliance and improve the relationship between taxpayers and government.

History.—Stats. 2004, Ch. 634 (AB 2030), in effect January 1, 2005, substituted “at least two hearings per year” for “an annual hearing” after “The board shall conduct”, substituted “that” for “which” after “Products Tax Law”, substituted “advance” for “improve” after “may further”, and added “improve” after “compliance and”.

30458.4. Preparation of statements by board. The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and taxpayers. As appropriate, statements shall be provided to taxpayers with the initial notice of audit, the notice of proposed additional taxes, any subsequent notice of tax due, or other substantive notices. Additionally, the board shall include this language for statements in the annual tax information bulletins that are mailed to taxpayers.

30458.5. Limit on revenue collected or assessed. (a) The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

(c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

30458.6. Evaluation of employee's contact with taxpayers. The board shall develop and implement a program that will evaluate an individual employee's or officer's performance with respect to his or her contact with taxpayers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

30458.7. Plan to timely resolve claims and petitions. The board shall, in cooperation with the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases that take more time than the appropriate standard timeframe.

30458.8. Procedures relating to protest hearings. Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

(a) Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

(b) The conference may be recorded only if prior notice is given to the taxpayer and the taxpayer is entitled to receive a copy of the recording.

(c) The taxpayer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

30458.9. Reimbursement of taxpayer. (a) Every taxpayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The taxpayer files a claim for the fees and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the taxpayer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the state was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “board” for “State Board of Control” after “expenses with the” in paragraph (1) of substituted “decides” for “makes a recommendation to the State Board of Control” after “The board” in paragraph (3) of, and deleted paragraph (4) which read: “The State Board of Control concurs with the recommendation and orders the board to provide reimbursement of fees and expenses to the taxpayer.” from, subdivision (a); and added subdivision (d). Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “within one year . . . board becomes final” after “with the board” in paragraph (1), and substituted “in an amount . . . its sole discretion” for “which shall be determined by the board” after “to the hearing” in paragraph (3) of, subdivision (a), substituted “board staff has . . . substantially justified” for “taxpayer has established that the position of the board staff was not substantially justified” after “consider whether the” in subdivision (b), and added subdivision (e). Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, substituted “the notice of determination, jeopardy determination, or claim for refund” for “filing petitions for redetermination and claims for refund” after “incurred after the date” in subdivision (c) paragraph (1).

30459. Investigation for nontax administration purposes. (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include cigarette and tobacco products tax violations.

(e) For the purposes of this section:

(1) “Investigation” means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) “Surveillance” means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

30459.1. Settlement of disputed liabilities. [Repealed by Stats. 1995, Ch. 497, in effect January 1, 1996.]

30459.1. Settlement authority. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute.

(2) No recommendation of settlement shall be submitted to the board unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(c) Whenever a reduction of tax in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

- (1) The name or names of the taxpayers who are parties to the settlement.
- (2) The total amount in dispute.
- (3) The amount agreed to pursuant to the settlement.
- (4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement entered into pursuant to this section shall constitute confidential tax information for purposes of Section 30455.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

History.—Added by Stats. 1995, Ch. 555, in effect January 1, 1996. Stats. 2003, Ch. 605 (SB 1060), in effect January 1, 2004, added “for at least one year,” after “there shall be placed on file” in the first sentence of subdivision (c).

30459.2. Release of levy. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event of any of the following:

(1) The expense of the sale process exceeds the liability for which the levy is made.

(2) The Taxpayers’ Rights Advocate orders the release of the levy or notice to withhold upon his or her finding that the levy or notice to withhold threatens the health or welfare of the taxpayer or his or her spouse and dependents or family.

(b) The board shall not sell any seized property until it has first notified the taxpayer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(c) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added “of Division 2” before “of Title 9” and added “Part 2 of” before “the Code” in subdivision (b).

30459.2A. Return of property. (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 30354 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) shall be subject to the provisions of Section 30459.4.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

30459.3. Exemptions from levy. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added “of Division 2” before “of Title 9” and added “Part 2 of” before “the Code”.

30459.4. Reimbursement of bank charges. (a) A taxpayer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution’s or third party’s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the taxpayer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the taxpayer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the taxpayer’s position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the taxpayer shall be notified in writing of the reason or reasons for the denial of the claim.

History.—Stats. 2001, Ch. 543 (SB 1185), in effect January 1, 2002, added “and any other reasonable third-party check charge fees” after “reimbursement of bank charges” in the first sentence of, added “and third party” after “Bank” and added “or third party’s” after “financial institution’s” in the second sentence of, and added “or third party” after “financial institution” in the third sentence of, subdivision (a).

30459.5. Mailing of preliminary notice of lien. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the taxpayer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the taxpayer

to prevent the filing or recording of the lien. In the event tax liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not apply to jeopardy determinations issued under Article 4 (commencing with Section 30241) of Chapter 4.

(c) If the board determines that filing a lien was in error, it shall mail a release to the taxpayer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the taxpayer and the entity recording the lien.

(d) When the board releases a lien erroneously filed, notice of that fact shall be mailed to the taxpayer and, upon the request of the taxpayer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added subdivision (e).

30459.6. Revocation or suspension of license. For the purposes of this part only, the board shall not revoke or suspend a person's license pursuant to Section 30144 or 30148 unless the board has mailed a notice preliminary to revocation or suspension that indicates that the taxpayer will be suspended by a date certain pursuant to that section. The notice preliminary to suspension shall be mailed to the taxpayer at least 60 days before the date certain.

30459.7. Disregard by board employee or officer. (a) If any officer or employee of the board recklessly disregards board-published procedures, a taxpayer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff which contributed to the damages.

(d) Whenever it appears to the court that the taxpayer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon a notice and demand from the board and shall be collected as a tax imposed under this part.

30459.8. Revenues and disbursements; Web site posting. The board shall, in each calendar quarter, post on its Web site the amounts of cigarette and tobacco products revenues collected and disbursed for the previous calendar quarter to the General Fund, Breast Cancer Fund, the Cigarette and Tobacco Products Surtax Fund, and the California Children and Families Trust Fund Account.

History.—Added by Stats. 2004, Ch. 634 (AB 2030), in effect January 1, 2005.

Uncodified Sections

§ 1. Multiagency task force.

1. **Multiagency task force.** (a) The multiagency task force established pursuant to Executive Order D-51-86 (hereinafter referred to as "task force") shall include among its goals and objectives the following:

(1) To deter tax evasion by maximizing recoveries from blatant tax evaders and violators of cash-pay reporting laws, utilizing all penalties which are available to the taxing and enforcement agencies under existing law.

(2) To reduce enforcement costs by eliminating duplicative audits and investigations.

(3) To generate greater voluntary taxpayer compliance and to deter tax and cash-pay violations by publicizing the efforts of the task force.

(4) To provide opportunities for auditors and investigators from tax and enforcement agencies to become familiar with other agencies' laws and enforcement procedures.

(5) To concentrate its efforts in investigating and prosecuting violations of cash-pay and tax laws by employers with five or more employees and by individuals who are habitual or willfull violators of those laws.

(b) In addition to the responsibilities cited in Executive Order D-51-86, the task force shall be empowered to do all of the following:

(1) Identify areas of blatant violations and noncompliance with tax and cash-pay laws.

(2) Solicit referrals from the tax and enforcement agencies represented on the task force committee of instances of blatant violations and noncompliance with tax and cash-pay laws.

(3) Conduct audits, investigations, and referrals for prosecution of violations referred by other agencies and in the identified areas of violations and noncompliance, using all enforcement powers available in existing laws and regulations.

(4) Establish an advertised telephone "hotline" for referrals from the public.

(5) Publicize the activities of the task force.

(6) Keep the audit and investigative staff of the tax and enforcement agencies represented on the task force committee fully informed of the activities of the task force.

(7) Develop procedures for improved information sharing among the agencies represented on the task force committee, consistent with restrictions on disclosure of confidential tax information in existing law, for the purpose of improving enforcement.

(8) Based on the activities of the task force, evaluate the need for any law changes to do any of the following:

(A) Eliminate barriers to interagency information sharing.

(B) Improve agencies' ability to audit, investigate, and prosecute tax and cash-pay violations.

(C) Deter violations and improve voluntary compliance.

(D) Eliminate duplication and improve cooperation among the participating agencies.

(c) The task force shall report to the Governor, the Senate and Assembly Revenue and Taxation Committees, and the Commission on California State Government Organization and Economy every six months during the period it is in existence, beginning on March 1, 1987, regarding the activities of the task force. The reports shall include, but not be limited to, all of the following:

(1) The number of cases of blatant violations and noncompliance with tax and cash-pay laws identified, audited or investigated, and referred for prosecution.

(2) Actions taken by the task force to publicize its activities.

(3) Efforts made by the task force to establish an advertised telephone "hotline" for referrals from the public.

(4) Procedures developed for improved information sharing among the agencies represented on the task force.

(5) Steps taken by the task force to improve cooperation among participating agencies, reduce duplication of effort, and improve voluntary compliance.

(6) Recommendations for any law changes needed to accomplish the goals described in paragraph (8) of subdivision (b).

CHAPTER 9. DISPOSITION OF PROCEEDS

- § 30461. Cigarette tax fund.
- § 30461.6. Disposition of fund.
- § 30462. Disposition of fund.
- § 30462.1. City population estimates.
- § 30463. Appropriation. [Repealed.]

30461. Cigarette tax fund. (a) All amounts required to be paid to the state under this part shall be paid to the board in the form of remittances payable to the State Board of Equalization. Except as provided in subdivision (b) and Section 30461.6, the board shall transmit the payments to the Treasurer to be deposited in the State Treasury to the credit of the Cigarette Tax Fund, which fund is hereby created.

(b) The board shall transmit amounts received from the penalty assessed pursuant to Section 30474 to the Treasurer for deposit in the General Fund.

History.—Stats. 1993, Ch. 660, in effect October 1, 1993, but operative January 1, 1994, added “except as provided in Section 30461.6,” before “the Board shall” in the second sentence, but was superseded by Stats. 1993, Ch. 1113, in effect January 1, 1994, which added “(a)”; changed the first “State” to lower case; deleted “of the State of California” following “State Board of Equalization”; added “Except as provided in (b),” before “the Board shall”; deleted “State” before “Treasurer” in the second sentence; and added subdivision (b). Stats. 1994, Ch. 903, in effect January 1, 1995, substituted “subdivision (b) and Section 30461.6” for “(b)” after “as provided in” in subdivision (a).

30461.6. Disposition of fund. (a) Notwithstanding Section 30461, the board shall transmit the revenue derived from the increase in the cigarette tax rate of one mill (\$0.001) per cigarette imposed by Section 30101 on and after January 1, 1994, to the Treasurer to be deposited in the State Treasury to the credit of the Breast Cancer Fund, which fund is hereby created. The Breast Cancer Fund shall consist of two accounts: the Breast Cancer Research Account and the Breast Cancer Control Account. The revenues deposited in the fund shall be divided equally between the two accounts.

(b) The moneys in the accounts within the Breast Cancer Fund shall, upon appropriation by the Legislature, be allocated as follows:

(1) The moneys in the Breast Cancer Research Account shall be allocated for research with respect to the cause, cure, treatment, earlier detection, and prevention of breast cancer as follows:

(A) Ten percent to the Cancer Surveillance Section of the State Department of Health Services for the collection of breast cancer-related data and the conduct of breast cancer-related epidemiological research by the state cancer registry established pursuant to Section 103885 of the Health and Safety Code.

(B) Ninety percent to the Breast Cancer Research Program, that is hereby created at the University of California, for the awarding of grants and contracts to researchers for research with respect to the cause, cure, treatment, prevention, and earlier detection of breast cancer and with respect to the cultural barriers to accessing the health care system for early detection and treatment of breast cancer.

(2) The moneys in the Breast Cancer Control Account shall be allocated to the Breast Cancer Control Program, that is hereby created for the provision of early breast cancer detection services for uninsured and underinsured women. The Breast Cancer Control Program shall be established in the State

Department of Health Services and shall be administered in coordination with the breast and cervical cancer control program established pursuant to Public Law 101-354.

(c) The early breast cancer detection services provided by the Breast Cancer Control Program shall include all of the following:

(1) Screening, including mammography, of women for breast cancer as an early detection health care measure.

(2) After screening, medical referral of screened women and services necessary for definitive diagnosis, including nonradiological techniques or biopsy.

(3) If a positive diagnosis is made, then assistance and advocacy shall be provided to help the person obtain necessary treatment.

(4) Outreach and health education activities to ensure that uninsured and underinsured women are aware of and appropriately utilize the services provided by the Breast Cancer Control Program.

(d) Any entity funded by the Breast Cancer Control Program shall coordinate with other local providers of breast cancer screening, diagnostic, followup, education, and advocacy services to avoid duplication of effort. Any entity funded by the program shall comply with any applicable state and federal standards regarding mammography quality assurance.

(e) Administrative costs of the State Department of Health Services shall not exceed 10 percent of the funds allocated to the Breast Cancer Control Program created pursuant to paragraph (2) of subdivision (b). Indirect costs of the entities funded by this program shall not exceed 12 percent. The department shall define 'indirect costs' in accordance with applicable state and federal law.

(f) Any entity funded by the Breast Cancer Control Program shall collect data and maintain records that are determined by the State Department of Health Services to be necessary to facilitate the state department's ability to monitor and evaluate the effectiveness of the entities and the program. Commencing with the program's second year of operation, the State Department of Health Services shall submit an annual report to the Legislature and any other appropriate entity. The costs associated with this report shall be paid from the allocation made pursuant to paragraph (2) of subdivision (b). The report shall describe the activities and effectiveness of the program and shall include, but not be limited to, the following types of information regarding those served by the program:

(1) The number.

(2) The ethnic, geographic, and age breakdown.

(3) The stages of presentation.

(4) The diagnostic and treatment status.

(g) The Breast Cancer Control Program shall be conducted in consultation with the Breast Cancer Research Program created pursuant to subparagraph (B) of paragraph (1) of subdivision (b).

(h) In implementing the Breast Cancer Control Program, the State Department of Health Services may appoint and consult with an advisory panel appointed by the State Director of Health Services and consisting of one ex officio, nonvoting member from the Breast Cancer Research Program, breast cancer researchers, and representatives from voluntary, nonprofit health organizations, health care professional organizations, breast cancer survivor groups, and breast cancer and health care-related advocacy groups. It is the intent of the Legislature that breast cancer-related survivors and advocates and health advocates for low-income women compose at least one-third of the advisory panel. It is also the intent of the Legislature that the State Department of Health Services collaborate closely with the panel.

(i) It is the intent of the Legislature in enacting the Breast Cancer Control Program to decrease cancer mortality rates attributable to breast cancer among uninsured and underinsured women, with special emphasis on low-income, Native American, and minority women. It is also the intent of the Legislature that the communities served by the Breast Cancer Control Program reflect the ethnic, racial, cultural, and geographic diversity of the state and that the Breast Cancer Control Program fund entities where uninsured and underinsured women are most likely to seek their health care.

(j) The State Department of Health Services or any entity funded by the Breast Cancer Control Program shall collect personal and medical information necessary to administer this program from any individual applying for services under the program. The information shall be confidential and shall not be disclosed other than for purposes directly connected with the administration of this program or except as otherwise provided by law or pursuant to prior written consent of the subject of the information.

The State Department of Health Services or any entity funded by the Breast Cancer Control Program may disclose the confidential information to medical personnel and fiscal intermediaries of the state to the extent necessary to administer this program, and to other state public health agencies or medical researchers when the confidential information is necessary to carry out the duties of those agencies or researchers in the investigation, control, or surveillance of breast cancer.

(k) The State Department of Health Services shall adopt regulations to implement this act in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of implementing regulations shall be deemed an emergency and shall be considered as necessary for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Section 11346.1. Emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

(l) It is the intent of the Legislature in enacting this section that this section supersede and be operative in place of Section 30461.6 of the Revenue and Taxation Code as added by Assembly Bill 478 of the 1993-94 Regular Session.

(m) To implement the Breast Cancer Control Program, the State Department of Health Services may contract, to the extent permitted by Section 19130 of the Government Code, with public and private entities, or utilize existing health care service provider enrollment and payment mechanisms, including the Medi-Cal program's fiscal intermediary. However, the Medi-Cal program's fiscal intermediary shall only be utilized if services provided under the program are specifically identified and reimbursed in a manner that does not claim federal financial reimbursement. Any contracts with, and the utilization of, the Medi-Cal program's fiscal intermediary shall not be subject to Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code. Contracts to implement the Breast Cancer Control Program entered into by the State Department of Health Services with entities other than the Medi-Cal program's fiscal intermediary shall not be subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

History.—Added by Stats. 1993, Ch. 660, in effect October 1, 1993, operative January 1, 1994, and superseded by Stats. 1993, Ch. 661, in effect January 1, 1994. Stats. 1994, Ch. 483, in effect January 1, 1995, relettered former subdivision "(b)" as "(1)"; substituted "The Breast Cancer Fund . . . breast cancer as follows" for "The money in the fund shall, upon appropriation by the Legislature, be allocated as follows: (1) Fifty percent to be allocated for research with respect to the cause, cure, treatment, earlier detection, and prevention of breast cancer as follows:" in subdivision (a) and the new subdivision (b); substituted "(2) The money in the . . . all of the following:" for "(2) (A) Fifty percent to be allocated to the Breast Cancer Control Program, which is hereby created for the provision of early breast cancer detection services for uninsured and underinsured women. The Breast Cancer Control Program shall be established in the State Department of Health Services and shall be administered by the breast and cervical cancer control program within the state department in accordance with Public Law 101-354. Those services shall include all of the following:" in subdivision (b) and the newly created subdivision (c); substituted subparagraph headings "(i)", "(ii)", "(iii)", and "(iv)" in subdivision (c) with "(1)", "(2)", "(3)", and "(4)", respectively; substituted subparagraph headings "(B)", "(C)", "(D)", "(E)", "(F)", "(G)", for subdivision headings "(d)", "(e)", "(f)", "(g)", "(h)", and "(i)", respectively; substituted "paragraph (2) of subdivision (b)" for "subparagraph (A)" after "pursuant to" in subdivision (e) and (f); substituted "accordance with applicable state and federal law" for "consultation with the advisory panel established pursuant to subparagraph (F)" after "indirect costs" in "in subdivision (c); substituted subparagraph headings "(i)", "(ii)", "(iii)", and "(iv)" in subdivision (f) with "(1)", "(2)", "(3)", and "(4)", respectively; substituted "The Breast Cancer . . . of subdivision (b)." for "This program shall be conducted in consultation with the Breast Cancer Research Program created pursuant to paragraph (1)." in subdivision (g); substituted "the Breast Cancer Control Program" for "this program" after "in implementing", added "one ex officio . . . Research Program" after "and consisting of", substituted "advocates for low-income women" for "care advocates" after "advocates and health", in subdivision (h); and added subdivisions (j) and (k). Stats. 1996, Ch. 1023, in effect September 29, 1996, substituted "103885" for "211.3" after "pursuant to Section" in paragraph (1)(A) of, and substituted "that" for "which" after "Cancer Control Program," in paragraph (B)(2) of, paragraph (b). Stats. 2002, Ch. 274 (AB 2143), in effect January 1, 2003, substituted "that" for "which" after "Breast Cancer Research Program," in subdivision (b) paragraph (1)(B) and added subdivision (m).

30462. Disposition of fund. (a) All money deposited in the Cigarette Tax Fund under this part is hereby appropriated, subject to the provisions of any budget bill heretofore or hereafter enacted, and shall, upon order of the State Controller, be drawn therefrom and allocated for the following purposes:

(1) To pay the refunds authorized by this part.

(2) The balance remaining in the fund shall be transferred to the General Fund of this state on or before the last calendar day of each month.

(b) It is the intent of the Legislature that Section 30111 continues to prohibit the imposition of local taxes by any city, charter city, town, county, charter county, city and county, and county, charter cities and counties, or other political

subdivision or agency of this state, on the sale, use, ownership, holding, or other distribution of cigarettes and tobacco products except as provided by Section 30111. The Legislature finds and declares that the need for uniform statewide regulation and collection of cigarette taxes is a matter of statewide concern, and it is the Legislature's intent to regulate the subject matter of cigarette taxes comprehensively and to occupy the field to the exclusion of local action except as specifically provided by Section 30111.

History.—Stats. 1967, p. 2525, operative August 1, 1967, completely revised this section. Stats. 1968, p. 1202, in effect July 11, 1968, operative July 1, 1968, revised this section, deleting former (b), (c), and related provisions; substituted the allocation formula contained in (c) for the former method which was based solely on local sales tax revenues; and relettered the remaining provisions. Stats. 1969, p. 275, in effect May 27, 1969, revised (c) and added the third paragraph under (d). Stats. 1969, p. 1871, in effect November 10, 1969, applicable to taxes imposed on and after January 1, 1970, added "less 30 percent of the cost of administering this part" to (c). Stats. 1971, p. 2791, operative July 1, 1972, added language as second sentence of (c) (1) limiting consideration by Controller in making determinations to revenues derived from taxes imposed by county at a rate not in excess of 1 percent. Stats. 1973, Ch. 806, effective January 1, 1974, deleted "by the Controller" from the last sentence of (c) (3) (B). Stats. 1977, Ch. 309, effective July 8, 1977, deleted in (b) " . . . not to exceed one hundred fifty thousand dollars (\$150,000) in each fiscal year." and in (c) "For transfer to the credit of a special account in the General Fund, an amount . . .", combined the former (c) into (b); changed (d) to (c). Stats. 1991, Ch. 331, in effect August 5, 1991, added "city and" before "city" in subdivision (b); added "one for the state" after "accounts", and "cities and" before "cities", and deleted "and one for the cities of this state" after "state", in the first sentence of paragraph (1) of subdivision (b); deleted "county" after "due each", substituted "and" for a comma after "city", added "county" after "city and county", substituted "respectively" for "in the unincorporated territory of a county" before "bear", substituted "that" for "such" after "total of", in the second sentence of paragraph (1) of subdivision (b); substituted "these" for "such" after "In making" in the third sentence of paragraph (1) of subdivision (b); substituted "(3)" for "(2)" after "to paragraph", and substituted "(4)" for "(3)" after "or paragraph" in the fourth sentence of paragraph (1) of subdivision (b); added the fifth sentence to paragraph (1) of subdivision (b); added paragraph (2) and renumbered paragraphs (2) and (3) as paragraphs (3) and (4); substituted "(4)" for "(3)" before "of this subdivision" and "until such time" in the sixth sentence of the new paragraph (3) of subdivision (b); substituted "(3)" for "(4)" after "paragraph" in the first sentence of the new paragraph (4) of subdivision (b). Stats. 1992, Ch. 699, in effect September 14, 1992, added "(a)" to the first paragraph, substituted "(1)" for "(a)" before "To pay the refunds", substituted "(b) To the Controller . . ." to the end of the section, which provided for allocation of revenues to cities and counties, with "(2) The balance remaining . . . provided by Section 30111." Stats. 2004, Ch. 227 (SB 1102), in effect August 16, 2004, deleted "and Section 11006 of the Government Code" after "heretofore or hereafter enacted".

Note.—Stats. 1971, p. 420 amending section 30108, provides under section 3, notwithstanding section 30462 of the Revenue and Taxation Code, no funds shall be appropriated from revenue generated by this act nor shall such funds be used for purposes of computations under such section, but shall be transferred to the State General Fund.

30462.1. City population estimates. Any city may apply to the population research unit of the Department of Finance to estimate its population. The department may make the estimate if in the opinion of the department there is available adequate information upon which to base the estimate. Upon completion of the estimate, and if requested to do so by the city, the Department of Finance shall file a certified copy thereof with the department and the Controller. This certification may be made once each fiscal year.

All payments under subparagraph (B) of paragraph (3) of subdivision (b) of Section 30462 for any allocation subsequent to the filing of the estimate shall be based upon the population so estimated until a subsequent certification is made by the Department of Finance or a subsequent federal decennial census is made.

Population changes based on a federal special census or a subsequent census or estimate validated by the Department of Finance shall be accepted by the Controller only if certified to him or her at the request of the city for which the census or estimate was made and shall become effective on the first day of the month following receipt of the certification.

The Department of Finance may assess a reasonable charge, not to exceed the actual cost thereof, for the preparation of population estimates pursuant to this section, which is a proper charge against the city applying therefor. The

amount received shall be deposited in the State Treasury as a reimbursement to be credited to the appropriation from which the expenditure is made.

As of May 1, 1988, any population estimate prepared by the Department of Finance pursuant to Section 2227 may be used for all purposes of this section unless a written request not to certify is received by the department from the city within 25 days of completion of the estimate.

History.—Added by Stats. 1984, Ch. 711, effective January 1, 1985. Stats. 1986, Ch. 982, effective January 1, 1987, added “population research unit of the” in the first sentence, replaced “fiscal” for “calendar”, and deleted “such time as” following “until” in the fifth sentence. Stats. 1988, Ch. 154, in effect June 10, 1988, added “As of May 1, 1988,” before “any population,” substituted “unless” for “if” after “section,” deleted “for certification to the Controller” and added “not to certify” after “request,” added “by the department” after “received” and substituted “25” for “45” after “city within” in the last sentence.

30463. Appropriation. [Repealed by Stats. 2000, Ch. 251 (AB 1123), in effect January 1, 2002.]

History.—Added by Stats. 1967, p. 3445, operative October 1, 1967.

Note.—Stats. 1967, p. 3445, operative October 1, 1967, states that it is the intent of the Legislature in adopting this act and p. 2471 of Stats. 1967 to allocate to local government all of the revenue derived from the taxes imposed by sections 30131 to 30136, as well as 30% of the revenue derived on and after October 1, 1967, from the tax imposed by section 30101.

CHAPTER 10. VIOLATIONS

- § 30471. Criminal penalties.
- § 30472. Criminal penalties.
- § 30473. Penalty for counterfeiting.
- § 30473.5. Penalty for fraudulent stamps.
- § 30474. Penalty for selling unstamped cigarettes.
- § 30474.1. Penalty for selling or possessing counterfeit cigarettes or tobacco products.
- § 30474.5. Competitive grant program.
- § 30475. Penalty for violation of transporter provisions.
- § 30476. Penalty for placing cigarettes without tax indicia in vending machine.
- § 30477. Violation of law.
- § 30478. Penalty; retailer purchasing from unauthorized persons.
- § 30479. Penalty; retailer convicted twice.
- § 30480. Felony offense.
- § 30481. Prosecution for violation.
- § 30482. Reimbursement of investigation and prosecution costs.

30471. Criminal penalties. Any person who fails or refuses to file any report required to be made, or who fails or refuses to furnish a supplemental report or other data required by the board, or who fails or refuses to allow an inspection by the board, pursuant to Section 30435, or who renders a false or fraudulent report is guilty of a misdemeanor and subject to a fine not to exceed one thousand dollars (\$1,000) for each offense.

History.—Stats. 1983, Ch. 1092, in effect September 27, 1983, operative January 1, 1984, substituted “one thousand dollars (\$1,000)” for “five hundred dollars (\$500)” after “exceeding.” Stats. 2003, Ch. 890 (AB 71), in effect January 1, 2004, added “fails or refuses to allow an inspection by the board, pursuant to Section 30435, or who” after “required by the board, or who”, and substituted “not to exceed” for “of not exceeding” after “subject to a fine”.

30472. Criminal penalties. Any person required to make, render, sign, or verify any report who makes any false or fraudulent report with intent to defeat or evade the determination required by law to be made is guilty of a misdemeanor. He shall for each offense be fined not less than three hundred dollars (\$300) and not more than five thousand dollars (\$5,000), or be imprisoned for not exceeding one year in the county jail, or be subject to both fine and imprisonment, in the discretion of the court.

30473. Penalty for counterfeiting. Any person who falsely or fraudulently makes, forges, alters, reuses or counterfeits any stamp or meter impression provided for or authorized under this part, or tampers with any metering machine authorized under this part, or causes or procures to be falsely or fraudulently made, forged, altered, reused or counterfeited, any such stamp or meter impression or knowingly and willfully utters, publishes, passes, or tenders as genuine any such false, forged, altered, reused or counterfeited stamp or meter impression, for the purpose of evading the tax imposed by this part, is guilty of a felony and subject to imprisonment for two, three or four years, or to a fine of not less than one thousand dollars (\$1,000) and not more than ten thousand dollars (\$10,000), or to both fine and imprisonment.

30473.5. Penalty for fraudulent stamps. (a) Any person who possesses, sells, or offers to sell, or buys or offers to buy, any false or fraudulent stamps or meter impressions provided for or authorized under this part in a quantity of less than 2,000 is guilty of a misdemeanor, punishable by a fine not to exceed five thousand dollars (\$5,000) or imprisonment not exceeding one year in a county jail, or by both the fine and imprisonment.

(b) Any person who possesses, sells, or offers to sell, or buys or offers to buy any false or fraudulent stamps or meter impressions provided for or authorized under this part in a quantity of 2,000 or greater, is guilty of a misdemeanor, punishable by a fine not to exceed fifty thousand dollars (\$50,000) or imprisonment not exceeding one year in a county jail, or by both the fine and imprisonment. The court shall order any fines assessed be deposited in the Cigarette and Tobacco Products Compliance Fund.

(c) The board shall destroy any stamps seized under this section.

History.—Added by Stats. 1996, Ch. 1087, in effect January 1, 1997. Stats. 2003, Ch. 890 (AB 71), in effect January 1, 2004, added subdivision letter (a) to former sole paragraph, added “or” after “or offers to sell,” and substituted “in a quantity of less than 2,000 . . . or by both the fine and imprisonment” in subdivision (a); added subdivisions (b) and (c).

30474. Penalty for selling unstamped cigarettes. (a) Any person who knowingly possesses, or keeps, stores, or retains for the purpose of sale, or sells or offers to sell, any package of cigarettes to which there is not affixed the stamp or meter impression required to be affixed under this part, when those cigarettes have been obtained from any source whatever, is guilty of a misdemeanor and shall for each offense be fined an amount not to exceed one thousand dollars (\$1,000), or be imprisoned for a period not to exceed one year in the county jail, or, at the discretion of the court, be subject to both the fine and imprisonment in the county jail.

(b) In addition to the fine or sentence, or both, each person convicted under this section shall pay one hundred dollars (\$100) for each carton of 200 cigarettes, or portion thereof, if that person knowingly possessed, or kept, stored, or retained for the purpose of sale, or sold or offered for sale in violation of this section, as determined by the court. The court shall direct that 50 percent of the penalty assessed be transmitted to the local prosecuting

jurisdiction, to be allocated for costs of prosecution, and 50 percent of the penalty assessed be transmitted to the State Board of Equalization.

(c) This section does not apply to a licensed distributor that possesses, keeps, stores, or retains cigarettes before the necessary stamp or meter impression is affixed.

History.—Stats. 1968, p. 2250, in effect November 13, 1968, revised the first sentence and added the second sentence. Stats. 1983, Ch. 1092, in effect September 27, 1983, operative January 1, 1984, substituted “one thousand dollars (\$1,000)” for “five hundred dollars (\$500)” after “not more than” in the first sentence, and substituted “fifty dollars (\$50)” for “twenty-five dollars (\$25)” after “pay” in the second sentence. Stats. 1993, Ch. 1113, in effect January 1, 1993, added commas following “stores” in the first and second sentence; substituted “those” for “such” before “cigarettes have been” in the first sentence; substituted “one hundred dollars (\$100)” for “fifty dollars (\$50)” in the second sentence; and added the third sentence. Stats. 2003, Ch. 890 (AB 71), in effect January 1, 2004, established the former first sentence as subdivision (a), substituted “an amount not to exceed” for “not more than” after “offense be fined”, deleted “, after “(\$1,000)”, and substituted “a period not to exceed . . . imprisonment in the county jail” for “not exceeding one year in the county jail, or be subject to both fine and imprisonment, in the discretion of the court” in subdivision (a); established the remaining former paragraph as subdivision (b), and added “if that person” after “or portion thereof,” in the first sentence of subdivision (b); and added subdivision (c).

30474.1. Penalty for selling or possessing counterfeit cigarettes or tobacco products. (a) Notwithstanding any other provision of law, the sale or possession for sale of counterfeit tobacco products, or the sale or possession for sale of counterfeit cigarettes by a manufacturer, importer, distributor, wholesaler, or retailer shall result in the seizure of the product by the board or any law enforcement agency and shall constitute a misdemeanor punishable as follows:

(1) A violation with a total quantity of less than two cartons of cigarettes shall be a misdemeanor punishable by a fine not to exceed five thousand dollars (\$5,000), or imprisonment not to exceed one year in a county jail, or both the fine and the imprisonment, and shall also result in the revocation by the board of the manufacturer, distributor, or wholesale license.

(2) A violation with a quantity of two cartons of cigarettes or more shall be a misdemeanor punishable by a fine not to exceed fifty thousand dollars (\$50,000) or imprisonment not to exceed one year in a county jail, or both the fine and imprisonment, and shall also result in the revocation by the board of the manufacturer, distributor, or wholesaler license.

(b) A court shall consider a defendant’s ability to pay when imposing fines pursuant to this section.

(c) For the purposes of this section, counterfeit cigarette and tobacco products include cigarette and tobacco products that have false manufacturing labels, false or fraudulent stamps or meter impressions, or a combination thereof.

(d) The board shall seize and destroy any cigarettes or other tobacco products forfeited to the state under this section.

(e) This section shall remain in effect until January 1, 2010, and as of that date shall be repealed.

History.—Added by Stats. 2003, Ch. 890 (AB 71), in effect January 1, 2004.

30474.5. Competitive grant program. (a) This section shall be known as and may be cited as the Black Market Cigarette and Street Corruption Prevention Act.

(b) The Legislature finds that the sale of black-market, untaxed cigarettes has resulted in the loss of hundreds of millions of dollars in revenue to the state, robbing state health care and programs designed to help children.

(c) It is the intent of the Legislature, by enacting the act adding this section, to provide resources to prosecutors and local law enforcement personnel, and to enable local jurisdictions to develop a multiagency task force for the purpose of significantly reducing the sales of black-market cigarettes and creating a deterrent to those sales through the focused investigation and prosecution of sales of black-market cigarettes, and other associated offenses and related crimes.

(d) In addition to the fine or sentence, or both, imposed by Section 30474, each person convicted under Section 30474 shall pay one hundred dollars (\$100) for each carton of 200 cigarettes, or portion thereof, knowingly possessed, or kept, stored, or retained for the purpose of sale, or sold or offered for sale in violation of Section 30474, as determined by the court. The court shall direct that the penalty of one hundred dollars (\$100) assessed under this section shall be transmitted to the Controller for deposit in the Unlawful Sales Reduction Fund, which is hereby created. Upon appropriation by the Legislature, the moneys in the fund shall be allocated to the Office of Criminal Justice Planning for the funding of a competitive grant program to be established by the Legislature to award grants to local jurisdictions for the purpose of establishing a multiagency task force, the composition of which shall include prosecutors and local law enforcement personnel and may include state law enforcement personnel, for the purpose of significantly reducing the sales of black-market cigarettes, and creating a deterrent to those sales through the focused investigation and prosecution of sales of black-market cigarettes and other associated offenses and related crimes. No more than 5 percent of the amount transmitted from the penalty of one hundred dollars (\$100) assessed under this section may be retained to fund the costs of administering the competitive grant program.

(e) The Office of Criminal Justice Planning shall consult with the State Board of Equalization in the administration of the competitive grant program.

(f) (1) The one hundred dollar (\$100) penalty for each carton of 200 cigarettes knowingly possessed, or kept, stored, or retained for the purpose of sale, or sold, or offered for sale in violation of Section 30474, as authorized under subdivision (d), shall only be imposed for the period beginning on January 1, 2003, and ending on January 1, 2006.

(2) This section shall remain in effect until December 1, 2006, or until all the moneys remaining in the Unlawful Sales Reduction Fund on January 1, 2006, have been appropriated by the Legislature for allocation to the Office of Criminal Justice Planning for funding the competitive grant program established under this section, whichever occurs later.

30475. Penalty for violation of transporter provisions. (a) Any transporter who transports cigarettes or tobacco products upon the highways, roads or streets of this state without having obtained a permit or without having a permit in the transporting vehicle as prescribed by Section 30431 or without having in the transporting vehicle the invoices, bills of lading or delivery tickets for the cigarettes or tobacco products as prescribed by Section 30432 is guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars (\$1,000) or be imprisoned for not more than one year in the county jail, or be subject to both fine and imprisonment in the discretion of the court.

(b) Any transporter who, with intent to defeat or evade or with intent to aid another to defeat or evade the taxes imposed by this part, at any given time transports 40,000 or more cigarettes or tobacco products with a value of five thousand dollars (\$5,000) or more upon the highways, roads or streets of this state without having obtained a permit or without having a permit in the transporting vehicle as prescribed by Section 30431 or without having in the transporting vehicle the invoices, bills of lading or delivery tickets for the cigarettes or tobacco products as prescribed by Section 30432 shall be punished by imprisonment in the county jail for not more than one year, or in the state prison for not less than one year nor more than five years, or by fine of not more than five thousand dollars (\$5,000), or be subject to both fine and imprisonment in the discretion of the court.

History.—Added by Stats. 1967, p. 2526, operative August 1, 1967, in part, formerly section 30433. Stats. 1968, p. 2122, in effect November 13, 1968, added the subdivision letters and the text of (b). Stats. 1989, Ch. 634, in effect September 21, 1989 added "or tobacco products" after "cigarettes" throughout text, and added "or tobacco . . . (\$5,000) or more" after "cigarettes" in subdivision (b).

30476. Penalty for placing cigarettes without tax indicia in vending machine. Any person in possession or control of, or having access to, a cigarette vending machine who knowingly or willfully places for sale in the vending machine, any cigarettes not contained in packages to which are affixed California tax stamps or meter impressions, is guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars (\$1,000) or be imprisoned for not more than one year in the county jail, or be subject to both fine and imprisonment at the discretion of the court.

History.—Added by Stats. 1967, p. 2526, operative August 1, 1967.

30477. Violation of law. Any violation of the provisions of this part, except as otherwise provided, is a misdemeanor and is punishable as such.

History.—Formerly section 30476, renumbered and added without change by Stats. 1967, p. 2526, operative August 1, 1967.

30478. Penalty; retailer purchasing from unauthorized persons. It shall be a misdemeanor for any retailer, as defined in Section 6015, to knowingly purchase cigarettes or tobacco products for resale from any person except a distributor or wholesaler licensed pursuant to this part.

History.—Added by Stats. 1968, p. 2251, in effect November 13, 1968. Stats. 1989, Ch. 634, in effect September 21, 1989, added "or tobacco products" after "cigarettes".

30479. Penalty; retailer convicted twice. If any retailer, as defined in Part 1 (commencing with Section 6001) of this division, is convicted under any provision of this part and has any previous conviction within a 10-year period under this part, the State Board of Equalization shall revoke all permits issued to such person under the Sales and Use Tax Law for a period of one year.

History.—Added by Stats. 1968, p. 2251, in effect November 13, 1968.

30480. Felony offense. Notwithstanding any other provision of this part, any person who violates this part with intent to defeat or evade the determination of an amount due required by law to be made is guilty of a felony when the amount of tax liability aggregates twenty-five thousand dollars (\$25,000) or more in any 12-consecutive-month period. The determination shall be approved by the executive director or his or her designee. Each offense shall be punished by a fine of not less than five thousand dollars (\$5,000) and not more than twenty thousand dollars (\$20,000), or imprisonment for 16 months, two years, or three years, or by both the fine and imprisonment in the discretion of the court.

History.—Added by Stats. 1987, Ch. 1064, effective January 1, 1988. Stats. 1989, Ch. 654, in effect January 1, 1990, substituted "Deputy Director, Business Taxes," for "administrator of the excise taxes". Stats. 1995, Ch. 555, in effect January 1, 1996, substituted "any person who violates this part" for "any violation of this part by" after "of this part," in the first sentence, and substituted "executive director or his or her" for "Deputy Director, Business Taxes, or that person's" after "approved by the" and added "by" after "three years, or" in the second sentence.

30481. Prosecution for violation. Any prosecution for violation of any of the penal provisions of this part shall be instituted within six years after commission of the offense.

History.—Added by Stats. 1986, Ch. 1361, effective January 1, 1987. Stats. 2003, Ch. 890 (AB 71), in effect January 1, 2004, substituted "six" for "three" after "instituted within" and deleted "or within two years after the violation is discovered, whichever is later" after "of the offense".

Note.—Sec. 41, Stats. 1986, Ch. 1361 required that:

(a) On January 15 of each year from 1988 to 1992, inclusive, the State Board of Equalization and the Franchise Tax Board shall submit a report to the Legislature on implementation of the provisions of this act, with the exception of Section 40 of this act (for which separate reporting requirements are set out).

(b) The revenue and taxation policy committees of each house of the Legislature shall hold a public hearing no later than June 30 of each year from 1988 to 1992, inclusive, on the reports submitted pursuant to subdivision (a).

(c) The intent of this section is to assure the Legislature the opportunity to oversee the implementation of this act. The intent of the Legislature in enacting this act is to improve enforcement and voluntary compliance with the tax system and cash-pay reporting rules. The intent of the Legislature in enacting this act is not to cause harassment of or undue burden on innocent taxpayers.

Sec. 41 applies to the following Revenue and Taxation Code Sections: 6069, 6071, 6366, 6366.1, 6368, 6368.1, 6452, 6455, 6776, 6777, 7154, 8404, 9355, 30481, 32556, 40188, 41143, and 44186.

30482. Reimbursement of investigation and prosecution costs. Any person convicted of a crime under this part may be charged the costs of investigation and prosecution at the discretion of the court.

All moneys remitted to the board under this part shall be transmitted to the Treasurer who shall deposit it into the State Treasury and credit it to the Cigarette Tax Fund.

History.—Added by Stats. 2003, Ch. 890 (AB 71), in effect January 1, 2004.

7318
2004-1

CIGARETTE AND TOBACCO PRODUCTS TAX LAW

HEALTH AND SAFETY CODE**PROVISIONS RELATING TO THE MASTER SETTLEMENT AGREEMENT**

(Article 3, Chapter 1, Part 3, Division 103, Health and Safety Code)

§ 104555.	Findings and declarations of the Legislature
§ 104556.	Definitions
§ 104557.	Tobacco manufacturer's sale of cigarettes; requirements.
§ 104558.	Master Settlement Agreement moneys; security.

104555. Findings and declarations of the Legislature. The Legislature finds and declares all of the following:

(a) Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The Surgeon General has determined that smoking causes lung cancer, heart disease, and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the state. Under certain health care programs, the state may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the state pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the state that financial burdens imposed on the state by cigarette smoking be borne by tobacco product manufacturers rather than by the state to the extent that those manufacturers either determine to enter into a settlement with the state or are found culpable by the courts.

(e) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the Master Settlement Agreement, with the state. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present, and certain future claims against them as described therein, to pay substantial sums to the state (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the state if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the state will have an eventual source of recovery from them if they are proved to have acted culpably. It is thus in the interest of the state to require that these manufacturers establish a reserve fund to guarantee a source of compensation and to prevent those manufacturers from deriving large, short-term profits and then becoming judgment proof before liability may arise.

104556. **Definitions.** The definitions contained in this section shall govern the construction of this article.

(a) “Adjusted for inflation” means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(b) “Affiliate” means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms “owns,” “is owned,” and “ownership” mean ownership of an equity interest, or the equivalent thereof, of 10 percent or more, and the term “person” means an individual, partnership, committee, association, corporation, or any other organization or group of persons.

(c) “Allocable share” means allocable share as that term is defined in the Master Settlement Agreement.

(d) “Cigarette” means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; (2) tobacco, in any form, that is functional in the product, which because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in this section. “Cigarette” also includes “roll-your-own” tobacco, meaning any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes. For purposes of this definition of “cigarette,” 0.09 ounces of “roll-your-own” tobacco shall constitute one individual “cigarette.”

(e) “Master Settlement Agreement” means the settlement agreement and related documents entered into on November 23, 1998, by the state and leading United States tobacco product manufacturers.

(f) “Qualified escrow fund” means an escrow arrangement with a federally or state chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least one billion dollars (\$1,000,000,000) where the arrangement requires that the financial institution hold the escrowed funds’ principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing, or directing the use of the funds’ principal except as consistent with subdivision (b) of Section 104557.

(g) “Released claims” means released claims as that term is defined in the Master Settlement Agreement.

(h) “Releasing parties” means releasing parties as that term is defined in the Master Settlement Agreement.

(i) “Tobacco product manufacturer” means an entity that after the date of enactment of this article directly, and not exclusively through any affiliate:

(1) Manufactures cigarettes anywhere that the manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where the importer is an original participating manufacturer as that term is defined in the Master Settlement Agreement, that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States); or

(2) Is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or

(3) Becomes a successor of an entity described in paragraph (1) or (2). The term “tobacco product manufacturer” shall not include an affiliate of a tobacco product manufacturer unless the affiliate itself falls within any of paragraphs (1) to (3) of this subdivision.

(j) “Units sold” means the number of individual cigarettes sold in the state by the applicable tobacco product manufacturer, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, during the year in question, as measured by excise taxes collected by the state on packs, or “roll-your-own” tobacco containers, bearing the excise tax stamp of the state. The State Board of Equalization shall adopt any regulations as are necessary to ascertain the amount of state excise tax paid on the cigarettes of the tobacco product manufacturer for each year.

104557. Tobacco manufacturer’s sale of cigarettes; requirements. (a) Any tobacco product manufacturer selling cigarettes to consumers within the state, whether directly or through a distributor, retailer or similar intermediary or intermediaries, after the date of enactment of this article shall do one of the following:

(1) Become a participating manufacturer as that term is defined in Section II(jj) of the Master Settlement Agreement and generally perform its financial obligations under the Master Settlement Agreement; or

(2) Place into a qualified escrow fund by April 15 of the year following the year in question the following amounts, as such amounts are adjusted for inflation:

(A) For 1999: \$0.0094241 per unit sold during that year, after the date of the enactment of this article.

(B) For 2000: \$0.0104712 per unit sold during that year.

(C) For each of 2001 and 2002: \$0.0136125 per unit sold during the year in question.

(D) For each of 2003 through 2006: \$0.0167539 per unit sold during the year in question.

(E) For each of 2007 and each year thereafter: \$0.0188482 per unit sold during the year in question.

(b) Any tobacco product manufacturer that places funds into escrow pursuant to paragraph (2) of subdivision (a) shall receive the interest or other appreciation on the funds as earned. The funds, other than the interest or other appreciation, shall be released from escrow only under the following circumstances:

(1) To pay a judgment or settlement on any released claim brought against that tobacco product manufacturer by the state or any releasing party located or residing in the state. Funds shall be released from escrow under this subdivision (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under that judgment or settlement.

(2) To the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in this state in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of the agreement including after the final determination of all adjustments, that the manufacturer would have been required to make on account of the units sold had it been a participating manufacturer, the excess shall be released from escrow and revert back to that tobacco product manufacturer; or

(3) To the extent not released from escrow under paragraph (1) or (2) of subdivision (b), funds shall be released from escrow and revert back to the tobacco product manufacturer 25 years after the date on which they were placed into escrow.

(c) Each tobacco product manufacturer that elects to place funds into escrow pursuant to paragraph (2) of subdivision (a) shall annually certify to the Attorney General that it is in compliance with paragraph (2) of subdivision (a), and subdivision (b). The Attorney General may bring a civil action on behalf of the state against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall:

(1) Be required within 15 days to place the funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of paragraph (2) of subdivision (a), or subdivision (b), may impose a civil penalty to be paid to the General Fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow.

(2) In the case of a knowing violation, be required within 15 days to place the funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of paragraph (2) of subdivision (a), or subdivision (b), may impose a civil penalty to be paid to the General Fund in an amount not to exceed 15 percent of the amount

improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow.

(3) In the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the state, whether directly or through a distributor, retailer, or similar intermediary, for a period not to exceed two years.

(d) Each failure to make an annual deposit required under this section shall constitute a separate violation.

104558. Master Settlement Agreement moneys; security. (a) In order to secure and protect the moneys to be received as a result of the Master Settlement Agreement, as defined in subdivision (e) of Section 104556, in civil litigation under any legal theory involving a signatory, successor of a signatory, or an affiliate of a signatory to the Master Settlement Agreement that has not been brought to trial as of the effective date of this section, the amount of the required undertaking, bond, or equivalent surety to be furnished during the pendency of an appeal or any discretionary appellate review of any judgment granting legal, equitable, or any other form of relief in order to stay the execution thereon during the entire course of the appellate review shall be set in accordance with applicable laws and rules of the court, except that the total undertaking, bond, or equivalent surety that is required per case, whether individual, aggregate, or otherwise, all of appellants, collectively, may not exceed 100 percent of the verdict or one hundred fifty million dollars (\$150,000,000) whichever is less, regardless of the value of the judgment.

(b) Nothing in this section or any other provision of law shall be construed to eliminate the discretion of the court, for good cause shown, to set the undertaking or bond on appeal in an amount lower than that otherwise established by law.

(c) If the appellee proves by a preponderance of the evidence that a party bringing an appeal or seeking a stay of execution of judgment and for whom the undertaking has been limited under this section, is intentionally dissipating or diverting assets outside the ordinary course of its business for the purpose of avoiding ultimate payment of the judgment, any limitation under subdivision (a) may be rescinded and the court may order any actions necessary to prevent dissipation or diversion of the assets.

History.—Stats. 2004, Ch. 183 (AB 3082), in effect January 1, 2005, substituted “less” for “lesser” after “(150,000,000) whichever is” in subdivision (a).

7324
2004-1

CIGARETTE AND TOBACCO PRODUCTS TAX LAW

INDEX

A

Administration and enforcement . . . 30451–30455
 Amendments to article . . . 30130
 Annual hearing with taxpayers . . . 30458.3
Auction.
seized property, sale by Board at public auction . . . 30355

B

Bill of Rights . . . 30458–30459.7
 Bond
 amount . . . 30142
 liquidation of security . . . 30146
 requirements . . . 30141
 wholesaler . . . 30156
 withdrawal of surety . . . 30143

C

California Taxpayers' Bill of Rights . . . 30458–30459.7
 Cancellation of illegal determinations . . . 30421
 Certificate of delinquency . . . 30303
 Cigarette, defined . . . 30003, 30121
 Cigarette and tobacco products surtax fund, defined . . . 30122
 Cigarette tax fund
 deposit in . . . 30461, 30461.6
 refunds paid from . . . 30462
 transfer to General Fund . . . 30462
 Cities
 population estimates . . . 30462.1
 Collection
 board, authority of . . . 30352
 bond. See bond, under this title
 creditors, notice of delinquency to . . . 30311
 injunction against, prohibited . . . 30401
 lien of tax. See lien of tax, under this title
 notice to person other than taxpayer . . . 30315
 notice to withhold
 liability of creditor . . . 30314
 notice to board . . . 30313
 notice to creditors . . . 30311
 transferability of credits . . . 30312
 remedies for, cumulative . . . 30351
seizure and sale for
 authority of board . . . 30355
 bill of sale . . . 30357
 deed . . . 30357
 disposition of proceeds . . . 30358
 notice of sale . . . 30356
 procedure . . . 30356–30358
 seizure and sale of cigarettes . . . 30475
 seizure and sale of vending machines . . . 30475
 suit for
 attachment in . . . 30302
 Attorney General, duty in . . . 30301
 certificate of delinquency prima facie evidence of liability in . . . 30303
 warrant for . . . 30341–30343
 Common carriers
 reports of . . . 30186
 sales on board, taxable . . . 30104
 sales to, exempt . . . 30104
 Competitive grant program . . . 30474.5
 Construction of provisions . . . 30002
 Counterfeiting . . . 30473
Credit purchases
 due date . . . 30168

D

Decedent; limitations; deficiency
determination . . . 30207.1

Deficiency determinations
basis . . . 30201
decedent . . . 30207.1
finality . . . 30263
interest . . . 30202
limitation . . . 30207, 30207.1
notice . . . 30206
offset . . . 30203
penalties . . . 30204, 30205, 30264
period . . . 30207
waiver . . . 30208

Dealer, defined . . . 30012

Definitions . . . 30002–30018

Determination of tobacco products tax rate . . . 30126

Determination when no return filed
basis . . . 30221
finality . . . 30263
interest . . . 30223
notice . . . 30225
offsets . . . 30222
penalty . . . 30221, 30224, 30264

Disposition of proceeds . . . 30124, 30461, 30461.6, 30462

Web site posting . . . 30459.8

Disregard by board employee or officer . . . 30459.7

Distribution, defined . . . 30008

Distribution, presumption of . . . 30109

Distributor, defined . . . 30011

Distributor engaged in business in the state, defined . . . 30108

E

Earnings withheld . . . 30316

Education program . . . 30458.2

Effective date; article . . . 30128

Electronic filing . . . 30193

Electronic funds transfer . . . 30190
definitions . . . 30191
relief of penalty . . . 30192

Employees of board . . . 30452
evaluation of, . . . 30458.6

Evidence
presumption of distribution . . . 30109
prima facie, certificate of delinquency is, of liability . . . 30303

Examination and investigation of records . . . 30454

Exemptions
distribution under bond or customs control . . . 30102.5
generally
claims for exemption . . . 30110
common carriers, sales to . . . 30104
federal instrumentalities, sale to . . . 30102
levies . . . 30459.3
manufacturer, sale by . . . 30103
single lot or shipment of 200 cigarettes or less . . . 30106
veterans' institutions, sale or gift to . . . 30105.5

F

Face-to-face sale . . . 30101.7

Fund, defined . . . 30122

H

Hearings. See redeterminations, under this title

I

Illegal determination, cancellation of . . . 30421

Importer, defined . . . 30019

Importers, sales by original . . . 30105

Imposition of tax
collection by distributor . . . 30108

I (Contd.)

- common carriers, sales on board . . . 30104
- distributors . . . 30101
- effective date . . . 30129
- payment by consumer . . . 30106
- sale by original importer . . . 30105
- In this state, or, in the state, defined . . . 30013
- Injunction against collection prohibited . . . 30401
- Inspections by board . . . 30435
- failure to allow . . . 30471
- Installment payment agreement . . . 30354
- annual statement . . . 30354.5
- Interest
- deficiency determinations . . . 30202
- determination when no return filed . . . 30223
- excusable delay . . . 30282
- extension of time for return or payment, upon . . . 30185
- failure to pay . . . 30281
- judgment for refund . . . 30406
- overpayment of tax . . . 30366, 30367
- relief from . . . 30283, 30283.5
- Investigation costs, reimbursement . . . 30482
- Invoices . . . 30107, 30432

J

- Jeopardy determinations
- administrative hearing . . . 30243.5
- basis . . . 30241
- finality . . . 30242
- interest . . . 30281
- penalty . . . 30281
- redetermination, right to . . . 30243
- service of notice . . . 30244

L

- Levies
- exemptions from . . . 30459.3
- reimbursement of bank charges . . . 30459.4
- release of . . . 30459.2
- Licenses
- automatic suspension . . . 30144
- distributor's . . . 30140
- issuance and display . . . 30147, 30157
- permits not engaged in business in this state . . . 30140.1
- revocation . . . 30148, 30158
- transporter's. See transporters, requirements, under this title
- wholesaler . . . 30155-30159
- Lien of tax
- mailing of preliminary notice of, . . . 30459.5
- perfection of, and enforceability . . . 30322
- priority of . . . 30321
- Limitation period
- decendent . . . 30207.1
- deficiency determinations . . . 30207, 30207.1
- financially disabled . . . 30362.1
- refunds, claims for . . . 30362
- refunds, suits for . . . 30403

M

- Master Settlement Agreement compliance . . . 30165.1
- violation defense . . . 30165.1
- Meter impressions. See stamps and meter impressions, under this title
- Multitasking task force . . . Chapter 8, Uncodified Sections.

N

Notices

seized property, notice of sale of . . . 30356

O

Oath, board may require re reports . . . 30454

Offenses

cigarettes without indicia in vending machine . . . 30476

counterfeiting . . . 30473

divulging of information . . . 30455

divulging of information by tax preparer . . . 30455.5

failure to allow inspection . . . 30471

failure to have license . . . 30149, 30159

failure to keep records . . . 30471

false reports . . . 30472

felony: intent to evade determination . . . 30480

prosecution for violations . . . 30481

selling unstamped cigarettes . . . 30474, 30474.5

seizure of cigarettes . . . 30475

violation of any other provisions of law . . . 30477

Offsets against overpayments

determination when no return . . . 30222

refunds . . . 30361

suit for refund . . . 30406

Overpayments. See refund or credit of taxes, under this title

P

Package, defined . . . 30015

Payment

board, to be made to . . . 30461

by consumer . . . 30107

due date . . . 30181

extensions . . . 30185

return, to accompany . . . 30184

stamps or impressions, without . . . 30165

Penalties

excusable delay . . . 30282

failure to file return . . . 30221, 30224

failure to pay determinations . . . 30264

fraud . . . 30205, 30224

fraudulent stamps . . . 30473.5

intentional disregard of law . . . 30204

negligence . . . 30204

retailer convicted twice . . . 30479

retailer purchasing from unauthorized person . . . 30478

selling or possessing counterfeit product . . . 30474.1

Permit, transporter's . . . 30431

Person, defined . . . 30010

Population

cities: estimates . . . 30462.1

Presumption of distribution . . . 30109

Prosecution costs, reimbursement . . . 30482

R

Rate of tax . . . 30101, 30123

Records

examination of . . . 30454

failure to keep as required, misdemeanor . . . 30471

form to be prescribed by board . . . 30471

Redeterminations

due date . . . 30264

finality date . . . 30263

form and content . . . 30261.5

hearing by board . . . 30262

interest . . . 30281

notice . . . 30265

petition for . . . 30243, 30261

security, when board may require . . . 30243

R (Contd.)

- Refund or credit of taxes
 - certification of claim by board . . . 30361
 - cost of affixing stamps and meter impressions . . . 30166-30172
 - credit in lieu of refund . . . 30176.2, 30178.2
 - defense for Master Settlement Agreement compliance . . . 30165.1, 30177
 - destroyed or unusable cigarettes . . . 30177
 - erroneous refunds, interest on . . . 30384
 - erroneous refunds, recovery of . . . 30381, 30383
 - exported tax-paid tobacco products . . . 30176.1
 - failure to file claim . . . 30364
 - form and content of claim . . . 30363
 - interest . . . 30179.1, 30366, 30367
 - limitation period . . . 30178.1, 30362
 - meter impressions, unused or unusable balance . . . 30176-30177
 - notice of disallowance . . . 30365
 - returned tobacco products 30176.2
 - stamps, unused or unusable . . . 30176-30177
 - suit to obtain
 - claim, necessity for . . . 30402
 - claim, not acted upon . . . 30404
 - grounds for, stated in claim . . . 30403
 - interest on judgment . . . 30406
 - judgment for assignee prohibited . . . 30407
 - limitation period . . . 30403
 - right to bring . . . 30403
 - timely suit, failure to bring . . . 30405
 - venue . . . 30403
- Registration of unlicensed distributors . . . 30151
- Reimbursement; investigation and prosecution costs . . . 30482
- Relief of tax, penalty and interest . . . 30284
- Remedies cumulative . . . 30351
- Reports
 - consumer . . . 30187
 - due date . . . 30181
 - electronic filing . . . 30193
 - extensions of time . . . 30185
 - failure to file
 - interest . . . 30223
 - notice of determination, when . . . 30225
 - penalty re when fraud . . . 30224
 - wholesaler . . . 30188
 - false return, misdemeanor to make . . . 30471, 30472
 - form of, board to prescribe . . . 30182, 30183, 30186, 30187
 - licensed distributor . . . 30182
 - payment to accompany . . . 30184, 30186, 30187
 - registered distributor . . . 30183
 - sales on common carrier . . . 30186
- Reports, supplemental . . . 30454
- Return of property . . . 30459.2A
- Returns. See reports, under this title
- Revocation of license . . . 30459.6
- Rules and regulations . . . 30451

S

- Sale, defined . . . 30006
- Security. See bond, under this title
- Seizure and forfeiture . . . 30436-30449
- Seizure and sale. See collection, under this title
- Selling unstamped cigarettes . . . 30474, 30474.5
 - competitive grant program . . . 30474.5
- Settlement authority . . . 30459.1
- Stamps and meter impressions
 - affixed to package . . . 30163
 - prohibition . . . 30165.1
 - defined . . . 30018
 - design, specification and denomination . . . 30162
 - determinations . . . 30173-30175

S (Contd.)

distributors, sale to, including credit, authorization, penalty and interest . . . 30166–30172
form to be prescribed by board . . . 30161
manner of affixing . . . 30162
refund . . . 30176–30179
transfer of stamps or meters . . . 30164
unused or unusable, redemption and refund for . . . 30176–30177
use of machines . . . 30164
Suit for refund. See refund or credit of taxes, under this title
Suit for tax. See collection, under this title
Suit to recover erroneous refund. See refund or credit of taxes, under this title

T

Tax, in lieu . . . 30111
Taxpayers' Bill of Rights . . . 30458–30459.7
Title of act . . . 30001
Tobacco products, defined . . . 30121
 prohibition to pay tax on . . . 30165.1
Transporter, defined . . . 30014
Transporters, requirements
 permit . . . 30431
 possession of invoices . . . 30432
 violation of transporter provisions . . . 30475

U

Unlicensed person
 immediate liability . . . 30210
 penalty . . . 30211
 seizure and sale of property . . . 30212
Untaxed cigarette, defined . . . 30005
Untaxed tobacco product, defined . . . 30005.5
Use of funds . . . 30125
Use or consumption, defined . . . 30009

V

Vendor-assisted sale . . . 30101.7
Violations. See offenses, under this title

W

Warrant for collection . . . 30341–30343
Web site posting; revenues and disbursements . . . 30459.8
Wholesaler
 bond . . . 30156
 defined . . . 30016
 fee . . . 30156
 license . . . 30155–30159
 reports . . . 30188
Wholesale cost, defined . . . 30017
Written advice, reliance upon . . . 30284

TABLE OF CASES

Section

A	
B	
C	
<i>California State Board of Equalization v. Chemehuevi Indian Tribe</i> , (1985) 474 U.S. __, 88 L. Ed. 2d 9.....	30108
<i>Chemehuevi Indian Tribe v. California State Board of Equalization</i> , (1986) 800 F.2d 1446.....	30108
D	
E	
F	
G	
H	
I	
J	
K	
<i>Kennedy Wholesale, Inc. v. State Board of Equalization</i> , (1991) 53 Cal.3d 245.....	30121
L	
M	
N	
O	
P	
Q	
R	
S	
T	
U	
V	
W	
X	
Y	
Z	

7332
2004-1

CIGARETTE AND TOBACCO PRODUCTS TAX LAW